S. HRG. 98-773,
PART 2

SOCIAL SECURITY DISABILITY REVIEWS: THE HUMAN COSTS

JOINT HEARING

BEFORE THE

SPECIAL COMMITTEE ON AGING
UNITED STATES SENATE

AND THE

SUBCOMMITTEE ON SOCIAL SECURITY

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

SECOND SESSION

PART 2—DALLAS, TEX.

FEBRUARY 17, 1984

COMMITTEE ON WAYS AND MEANS

Serial 98-61

Printed for the use of the Senate Special Committee on Aging and
the House Committee on Ways and Means

U.S. GOVERNMENT PRINTING OFFICE
33-658 O WASHINGTON : 1984

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

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SOCIAL SECURITY DISABILITY REVIEWS: THE HUMAN COST

FRIDAY, FEBRUARY 17, 1984

U.S. SENATE, SPECIAL COMMITTEE ON AGING; AND SUBCOMMITTEE ON SOCIAL SECURITY OF THE COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES,
Dallas, Tex.

The committees met, pursuant to notice, at 9 a.m., in the assembly room, Backman Recreation Center, Dallas, Tex., Hon. J. J. Pickle presiding.

Present: Congressmen Frost and Pickle; and Senator Heinz.

Also present: From the Special Committee on Aging: John C. Rother, staff director and chief counsel; Larry Atkins and Paul Steitz, professional staff members; Terri Kay Parker, investigative counsel; and Isabelle Claxton, communications director. From the Subcommittee on Social Security: Erwin Hytner, Joseph Grant, and Bonnie McClelland, professional staff members.

Congressman PICKLE. We will call to order the Subcommittee on Social Security in the House of Representatives and the Senate Special Committee on the Aging. I am Congressman J. J. Pickle, chairman of the Social Security Subcommittee for the House. This is Senator John Heinz, chairman of the Senate Special Committee on Aging. We are glad to be here this morning and to proceed now with the hearing.

I am going to call on Congressman Martin Frost, Congressman from the 24th Congressional District, to make what remarks he may care to.

STATEMENT BY CONGRESSMAN MARTIN FROST

Congressman FROST. Thank you, Jake. I am pleased to welcome Senator Heinz and Congressman Pickle to Dallas for these hearings. The status of disability claims, both in terms of termination and the granting of initial claims, is a major concern and has been for the last several years.

We in my office here in Dallas probably have more problems relating to disability than any other matter that is handled by my congressional staff. Congressman Pickle, as chairman of the Social Security Subcommittee of the Ways and Means Committee in the House, has played a leading role in trying to resolve these problems and trying to make some progress, and I know Senator Heinz has devoted a great deal of his attention to this matter also. And I am pleased, as Congressman from Dallas, to welcome you today. I will be interested to hear what is said during these hearings and I know you both will take back what you hear today to Washington and continue to try and make some progress in this area. I thank you both for coming.

STATEMENT BY CONGRESSMAN J. J. PICKLE, PRESIDING

Congressman PICKLE. Thank you, Congressman Frost. I am going to make an opening statement and ask Senator Heinz also to make such opening statement or remarks that he might care to.

I want to observe before we start that we have some interesting witnesses here this morning. We will also hear from Vernon Arrell, the commissioner of the Texas Rehabilitation Commission, and he will be accompanied by Dale Place, director of that commission.

We also have Bob McPherson, State director of planning for the Governor's office in Austin. Gov. Mark White has asked Mr. McPherson to come here and testify. And we have other witnesses. So we will proceed according to the schedule we have. I want to proceed now with my opening statement.

Again I find myself joining with my congressional colleagues to conduct a hearing concerning the social security disability program and I must say that I am sorry that these hearings are necessary at all.

For several months, I have hoped that Congress and the administration could reach an agreement as to how this situation could be resolved. Indeed, I thought that such an understanding had been reached and we had proceeded through our subcommittee and through the full Committee on Ways and Means with that understanding.

Now to my surprise and regret, I find that such is not the case. I am especially disturbed that the administration had declined our invitation to testify at these hearings. It is incredible to me that the administration has refused to come and hear firsthand testimony on this problem and to answer our questions about their policies.

They not only don't want to help to solve the problem, it would appear that they don't want even to hear about it. And I hope that the administration will change their attitude on this subject and work with us toward the solution, which would include the passage of this legislation.

Now we in the Congress have worked for several years to insure that the social security disability program is run in a manner which is equitable to all claimants and also is in line with the specific and limited objectives of the program as laid out in the law. Now that is a tall order for both the administration and for the Social Security Administration.

As I look back on this program, I remember that in the late 1970's it was widely felt that in order to address apparently uncontrolled growth in the program, stronger administrative controls would be necessary.

Congress therefore enacted amendments which increased work incentives for beneficiaries and which gave the Social Security Administration greater administrative control. Unfortunately, a too hasty and insensitive implementation of one part of the 1980 amendments, that is, those sections that required a review once every 3 years, has proven disastrous to many individuals.

It has worked untold hardships on thousands of beneficiaries. During hearings held by my subcommittee last June, it became clear to me that congressional action was essential. Having already given the administration the necessary management tools, we needed to state more clearly the overall policy of the program.

At that time it was obvious that the reviews being conducted were far more severe than we in Congress had desired. When we reported the 1980 amendments, the fifth year savings estimated for these reviews was $168 million. By last summer, it became apparent that savings would be somewhere around $1.6 billion.

Now savings are to be desired and if savings can be accomplished by virtue of reviews, then we should be glad for it. But savings should not be made at the expense of the individual. As a result, the Federal courts began to hear more and more appeals resulting from these reviews, and rulings were handed down which overturned, suspended, or modified the disability review process in a number of States. And the States were coming to the Congress, complaining that they were being put in an administratively impossible situation. In short, things were falling apart.

After consideration we drafted legislation which established a procedure for decisionmaking that protects both the administration and the program. We did it by doing some of these things.

It establishes a sound and fair medical improvement standard. It addresses the problem of how to handle Federal appellate court decisions. It establishes uniform national policies of multiple impairments and of mental disabilities. The bill makes permanent the continuation of benefits upon appeal and it calls for face to face interviews with claimants at the State agency level.

In short, I think the bill responds to the needs as expressed by our committee last year. But today matters are in a chaotic condition. Twenty States are operating under some sort of court order, and in nine others the State governments have simply refused to process termination from the disability rolls in accordance with Federal guidelines. To put it plainly, we have no national program for disability benefits. What we have now is a mess. It is my feeling that the time to act is now. However, the administration in the last 3 weeks came before the Congress and testified that they do not favor any legislation in this area.

We in Congress are being told that the whole situation can be remedied by internal administrative reform. I personally don't see how that is possible, but I must try to keep an open mind as we now reexamine our status with respect to legislation.

So I am going to ask each one of you people who testify today three questions: Do you still feel, or do you believe that there are problems in the way SSA is conducting disability reviews? Are these problems being solved by the administration? And do you support legislative solutions, such as my subcommittee has developed?

Now your answers will be critical. If indeed we are in a mess today, then we need to send this message loud and clear to the administration. After all, you, the public, are the real judges of what should be done and how this program should be run. So we all look forward to your testimony this morning.

Now I am pleased to recognize Senator John Heinz. Senator Heinz and I served together in the House of Representatives. Sometimes we have been referred to as coauthors of bills, called the Heinz-Pickle bill. We have worked together on legislation in the House, and now, both in the House and Senate. We have no more distinguished American than our Senator friend from Pennsylvania.

We welcome you to Texas. We welcome you to these hearings, Senator Heinz, and we will hear from you now.

STATEMENT BY SENATOR JOHN HEINZ

Senator HEINZ. Congressman Pickle, Mr. Chairman, thank you very much. Congressmen Frost, Martin, we are delighted that you have welcomed both Congressman Pickle and me to your congressional district. It is very nice to be here. Although I can't claim personally to be a Texan, it might be difficult for me back in my home State of Pennsylvania were I to do so, nonetheless, my stepfather who just passed away last year was born in Abilene and was a very proud Texan to the day of his death. And never let me forget it.

Jake, I commend you on chairing these hearings and on your interest in this problem. I am going to ask unanimous consent that the text of my opening statement be put in the record in full, but I would just like to make a few points that sometimes people tend to forget when we talk about this problem.

The disability insurance program is what the words imply. It is an insurance program. It is part of the social security system. The taxes that people pay each week in their paycheck are divided in three pieces. The largest part goes into the old age and survivors fund. Another part goes into the health insurance or medicare fund, and the third part goes into what is called DI, the disability insurance fund. The technical name that Congressman Pickle and Congressman Frost and I always use for those trust funds is the OASDHI trust funds. You can see why we don't speak that way in public.

The purpose of that public policy and the administration of it with respect to the disability fund is twofold. First of all, because it is the taxes of insured workers that go into that fund, we should be sure that people are not put on disability rolls who, in fact, realistically can work.

The second concern we must have as arbiters of public policy is that people who cannot work because they are disabled in fact do get the benefits to which they are entitled. These people contributed to the trust funds in the expectation that should they be so unfortunate as to be stricken with a totally disabling disability and rendered unable to compete in the work force, they will not have to fear for their livelihood and will receive basic income support. Disability benefits prevent the disabled from being forced to go onto welfare rolls and becoming an additional burden to their families, themselves, and to the taxpayers of the State in which they have to reside.

The second thing I want to say is that I am deeply concerned that the Social Security Administration, the President, and even the American people are unaware of just how many people are being hurt by this process. And the reason that Congressman Pickle and I have decided to have hearings, not just here in Dallas, by the way, the Aging Committee held a hearing in Chicago yesterday and we intend to have additional hearings, if they are necessary, is that the problem must receive national attention. It must be brought to the President's attention in a forceful and urgent way.

We are also, as of today, at an extremely critical time in the administration of the program by the various States. Although the program is federally financed, it is the States that have been delegated the responsibility for actually making the reviews and deciding who can get on the rolls, who should be thrown off the rolls, who should stay on the rolls. That is the purpose of the State examining officers.

At this time, there are a large number of changes being proposed by the Department of Health and Human Services, some of which may be meritorious, some of which I personally have deep reservations about. Further, the Secretary, Mrs. Heckler, has just asked the States to once again begin sending out termination notices, including the States that have ordered moratoria on their own initiative.

Many courts, including at least three circuit courts, have ruled SSA must implement a medical improvement standard.

Speaking very personally, and I am speaking for myself, not for Jake Pickle, not for Congressman Frost, I have another reason I would like to see some action. And the best action, by the way, would be for the administration to sit down with Congressman Pickle, Senator Cohen, Senator Levin, and others who are concerned about this in Congress, and work out a legislative solution that would be good for the country that the President will sign and that we will pass.

I believe this country—and I am speaking for myself now—needs the kind of strong leadership that our President, Ronald Reagan, has been providing, and personally, I want to see him reelected. Although these disability reviews were mandated in the previous administration of President Carter, the failure to correct the flaws in this review system—and they are deep flaws indeed—is daily creating much disaster for a genuinely disabled group of Americans who, as I said, paid for this insurance. That lends credibility to the President's opponents who raise the issue of fairness.

And there is no doubt in my mind that fairness will be the President's opponents' issue in the fall campaign, and, frankly, I don't want to see my President hurt because of an insensitive bureaucracy running out of control.

You know, when a few disabled people get thrown off the disability rolls, it is casework for Congressman Pickle, Congressman Martin, or a Senator like myself, but when there are tens of thousands being thrown off the rolls who genuinely cannot work, it is time to bring the problem forcefully and urgently to the attention of the public and the President. And that, Mr. Chairman, I think is the most important part of this hearing. And I thank you.

Congressman **Pickle**. Well, Senator, we certainly thank you. You have made a strong statement, certainly a fair statement, and I think a strong appeal to the administration and I think the American people, and we ought to have some action.

[The prepared statement of Senator Heinz follows:]

Prepared Statement of Senator John Heinz

Good morning. Today, we are here to examine the local effects of what has become a national tragedy—the social security reviews of the disabled. The Special Committee on Aging of the U.S. Senate has long been concerned about the disability program, since it is an important part of the social security trust fund and since 73 percent of disability beneficiaries are over age 50. We are here today in Dallas to investigate the impact the continuing disability reviews have had on individuals, families, and communities across the country.

On a national level, the crisis in the disability program has reached immense proportions. Since March 1981, SSA has reviewed almost 1.1 million beneficiaries. Of these, 470,000 or about 45 percent, have received notices informing them they are no longer eligible for disability benefits. However, for every two people determined ineligible by SSA at the initial decision level, one has his or her benefits reinstated upon appeal. What happens to those without the resources or fortitude to appeal, who never have their benefits restored? The evidence available suggests that about one-third are forced to go on welfare, others end up homeless, and less than one-quarter obtain full-time employment. I hope we will learn more about that today.

In the past year, we have witnessed an unprecedented revolt of the States and courts against the Social Security Administration, and its management of the continuing eligibility reviews. Currently, more than half the States have either suspended the continuing reviews altogether, or conduct them under guidelines that differ from those of SSA. Many States have declared moratoria or modified the reviews on their own initiative, in open defiance to SSA; others are under court order to do so.

I understand that presently Governor White is considering imposing a moratorium on the reviews in Texas. I can sympathize with the bind he is in—on the one hand, he does not want to defy a Federal agency, yet he also is obliged to guard the rights of the disabled in this State, and protect them from an inflexible and inhumane review process. This conflict between the States and the Federal Government suggests that something is very wrong, and that a national solution is needed.

Several important court decisions have been recently issued which have found SSA's administration of the continuing reviews to be in violation of the law. Two class action suits have found that SSA has systematically discriminated against the mentally ill. In virtually every circuit, courts have ruled that if SSA is to terminate a beneficiary, SSA must demonstrate that the beneficiary's disabling condition has improved, and that individual can now work.

Combined, these State and judicial actions suggest that the social security disability program needs to be completely overhauled. We have a schizophrenic review process that takes away benefits with one hand and gives them back with another. We have a method of reexamining eligibility that does not yield fair or realistic results about an indivudial's capacity to actually work. We have purged the Federal rolls only to shift the expense of caring for the disabled to the State and local welfare programs, emergency shelters, and State hospitals.

To comprehensively reform the disability program we have to accomplish three things. We have to institute a medical improvement standard to protect people who have been receiving disability insurance benefits for many years and who are no longer able to go out and find work. Such a standard would appropriately shift the burden of proof of continuing eligibility from the beneficiary to SSA. We have to impose a temporary moratorium on all reviews of the mentally disabled, pending reforms in the methods through which their eligibility is determined. We also need to require that a qualified psychologist or psychiatrist perform the medical assessment of mentally impaired beneficiaries. Finally, we have to bind all levels of the disability decisionmaking process to one set of uniform standards, defined in regulations, and open for public inspection. Only these reforms will adequately reconstruct the disability program in a way that is fair both to the disabled individual and to working Americans who are paying for this insurance protection through their social security taxes.

Congressman PICKLE. Now we are going to proceed this morning in this manner. The first panel will include testimony from four individuals, accompanied by individuals who are with them. I am going to ask the first panel to come forward. I am going to assume, Commissioner Arrell, if you and Mr. McPherson—are you able to—is your time going to permit us to proceed with this first panel and then we will call on you? That will be fine. Thank you, sir, for your cooperation.

I am going to ask David Ross, Donald Garretson, John E. Roberts, and Charles Vent, if you will come forward and take your seat at the witness table as listed there on the name cards.

Let me ask each one of you to identify yourself. David Ross, will you hold up your hand? All right. Donald Garretson. Mr. Garretson is not here, then. John Roberts. Charles Vent. Will each one of you others identify yourself so we will know for the record who is here and who you represent? Will you start, then?

Mrs. YARBOROUGH. I am Sybil Yarborough and I am representing my brother, Charles Vent. I am to speak for him.

Congressman PICKLE. I see. All right.

Mr. WEISBROD. I am Carl Weisbrod. I am their attorney.

Congressman PICKLE. I see. All right, Mr. Weisbrod.

Mr. CORTEZ. My name is Robert Cortez, and I am Mr. Roberts' attorney.

Congressman PICKLES. All right. And Mr. Ross, you are here representing yourself.

Mr. ROSS. Yes, sir.

Congressman PICKLE. All right. Are you—will you please identify yourself now?

Mrs. GARRETSON. I am Pauline Garretson, the mother of Dal Garretson.

Congressman PICKLE. So it is not Donald Garretson, it——

Mrs. Garretson No; Dal is in the hospital.

Congressman PICKLE. Now how do you spell his name?

Mrs. GARRETSON. D-a-l.

Congressman PICKLE. I see. All right. We are glad to have you here.

Before we proceed, I am advised that some of those attending the hearing this morning have parked their car out in the handicapped parking space and they are having difficulty moving cars. Whoever has had their car so parked, would you please go to the rear and see if you can help them straighten that?

In the order that we have listed here, if it is satisfactory, I am going to ask Mr. Ross to proceed, then Mrs. Garretson, Mr. Roberts, and Mr. Vent. So, Mr. Ross, will you proceed with your statement? Would you want to be seated? Will you be more comfortable? You can do it either way you wish.

Mr. ROSS. Yes; I would rather sit down.

Congressman PICKLE. Now would you move the microphone over? And if you will speak closely to the microphone so we can hear.

Mr. ROSS. All right.

Congressman PICKLE. Now, if you will proceed.

STATEMENT OF DAVID ROSS, DALLAS, TEX.

Mr. Ross. They sent me a letter about—it was a year ago when they cut me off, and I finally had to get a lawyer to put me back on it. They sent me to two or three doctors and they found out I wouldn't be able to hold no job, so——

Congressman Pickle. What was your disability?

Mr. Ross. I had a stroke, a heart attack.

Congressman Pickle. A stroke. Were you in the hospital?

Mr. Ross. Yes, sir. Parkland Memorial.

Congressman Pickle. Mr. Frost, are you familiar with this?

Congressman Frost. Yes; Mr. Ross is my constituent. He is from the 24th District and did contact my office, also. And, Mr. Ross, you might want to tell him about all the things you had to do, all the different steps you had to do, to get your claim taken care of.

Mr. Ross. Yes. We had to go through a lot of trouble. For some reason or another, they didn't want to put me back on the disability roll. I don't know why.

Congressman Frost. But you did get put back on?

Mr. Ross. Oh, yes.

Congressman Frost. How long did it take you—you said it took a year?

Mr. Ross. It took me a year.

Congressman Frost. Now, you had been on before and then they knocked you off the roll?

Mr. Ross. Yes.

Congressman Frost. Was this one of those situations where you got a letter saying that you had to go get examined again?

Mr. Ross. Go to get examined again, go to a doctor. They wanted a doctor. I got another one here just a few months ago where they said the same thing, that it is time for review again.

Congressman Frost. And after that initial examination, they knocked you off the rolls.

Mr. Ross. Right.

Congressman Frost. And then you had to go through the process of getting put back on.

Mr. Ross. Getting a lawyer and everything.

Congressman Frost. How long had you been on the rolls before that? Do you recall?

Mr. Ross. Since 1977. I got sick July 5, 1976. It took me a year to get on it the first time.

Congressman Pickle. Mr. Ross, what kind of work were you doing?

Mr. Ross. Auto mechanic.

Congressman Pickle. Auto mechanic. And when they reviewed you originally, they said that you were able to do some other type of work?

Mr. Ross. Yes. They said I should be able to continue with some other kind of work.

Congressman Pickle. Did they say what kind?

Mr. Ross. No. I told them, find a job I can do and I would be glad to do it.

Congressman Pickle. How old are you?

Mr. Ross. Forty-eight.

Congressman FROST. Mr. Ross, I see you have a cane. Do you have trouble walking, trouble getting around?

Mr. Ross. I stumble quite a bit and fall. I have to keep this cane handy to balance myself good, keep from falling all the time.

Congressman PICKLE. I am going to proceed now down——

Senator HEINZ. May I ask Mr. Ross a few questions?

Congressman PICKLE. Yes, Senator.

Senator HEINZ. Thank you, Mr. Chairman. Mr. Ross, I understand you were terminated, in April 1982. When did you get your benefits back?

Mr. Ross. This year, 1984.

Senator HEINZ. Just the beginning of this year?

Mr. Ross. Right.

Senator HEINZ. So you were over a year without benefits?

Mr. Ross. Right.

Senator HEINZ. You did not have any benefits paid to you when you were getting your lawyer and when you were appealing?

Mr. Ross. No, sir. I sure didn't.

Senator HEINZ. How on earth did you survive? What did you live on?

Mr. Ross. Borrowing everything I could from friends and family.

Senator HEINZ. Did you have to go into debt?

Mr. Ross. Yes, sir. We did.

Senator HEINZ. Do you own your own home?

Mr. Ross. We have been buying a home since 1966.

Senator HEINZ. You have been buying your home since 1966? How did you make your mortgage payments?

Mr. Ross. Mostly from family and friends.

Senator HEINZ. Family and friends had to help you out? And did you have to pay your lawyer any money?

Mr. Ross. Well, they paid most of it.

Senator HEINZ. Who is they?

Mr. Ross. Social Security Administration.

Senator HEINZ. They did pay for your lawyer?

Mr. Ross. Right.

Senator HEINZ. I see two or three people shaking their heads behind you there—I have a feeling maybe your friends paid for your lawyer. I am not sure.

Mr. Ross. What they did is, they took it out of the settlement they gave me.

Senator HEINZ. Well, that money is your money, Mr. Ross. You put—all the years you were working, you were working for at least 15 or 20 years, as I do the math——

Mr. Ross. They took that money out of my settlement.

Senator HEINZ. What you are saying is your benefits were reduced, even though you were entitled to them, because you had to hire a lawyer to get that which you were entitled to. I don't think they did you a big favor, personally.

Mr. Ross. I am still paying for that, sir.

Senator HEINZ. I beg your pardon?

Mr. Ross. I am still paying on it. They cut my monthly check down.

A VOICE FROM AUDIENCE. They overpaid him. They didn't take out——

Congressman PICKLE. Will you identify yourself?

Mr. ROSS. This is my wife.

Mrs. ROSS. I am Virgie Ross.

Congressman PICKLE. Now what was your statement?

Mrs. ROSS. I said that when they did reinstate him, they didn't take out for the attorney, so now they wrote us a letter and cut the checks back, that they would stop them for however long it took to pay for the attorney.

Congressman PICKLE. So they have deducted it——

Mrs. ROSS. They are deducting it now. Right.

Senator HEINZ. One last question, or one last comment. Really, Mr. Chairman, here is a gentleman who the Social Security Administration says can work, but they didn't tell him what job he could do. This is a man who will do any job that he is able to do, and I would hope that people are aware that we are talking about people who want to work. When Mr. Ross retired, he ceased working because of a stroke, he didn't do it voluntarily. I am sure if anybody should give him a call today offering a job for him that he could do, that he would be most interested in that job and maybe some compassionate reporter out there will make note of that and maybe there will be, maybe there won't be a job out there for him. I kind of doubt it. They don't ever tell you what kind of work you can do. But, Mr. Ross, thank you very much. Mr. Chairman, I appreciate it.

Mr. ROSS. Yes, sir

Congressman PICKLE. Yes, sir. We thank you for your statement. We are going to ask you to stay at the witness table as we proceed to receive this other testimony, because there may be other questions. So if that is satisfactory.

I am going to ask Mrs. Garretson to make her statement. I presume you are doing so and representing your son, Dal?

Mrs. GARRETSON. Yes.

Congressman PICKLE. The committee now will be pleased to hear from you, Mrs. Garretson.

STATEMENT OF PAULINE GARRETSON, DALLAS, TEX.

Mrs. GARRETSON. Well, Dal is now——

Congressman PICKLE. Now will you pull the microphones up a little closer to you and speak, if you will, as loudly as you can.

Mrs. GARRETSON. Dal had surgery, bypass surgery, four bypasses, and of course, after that he was not able to work and he was on disability after that. And then, as this gentleman just said, we received—he received a letter saying that this would be the last check that he would get. They did send him to some doctor. We never did know who he was or what he represented, except that he was not our doctor. They would not allow him to go to his own doctor. He went to some doctor that we had never heard of.

They told him that he was able to do work, whatever he wanted to do. He had been—Dal had been in business for himself most of his life and he has had a lot of problems, so then he had this surgery, and he has tried, since that time, to do quite a number of different things and nothing that he has tried to do, that he was capable of doing due to his ailment. And now he is in the rehabilitation hospital over here in Dallas because he had a stroke December 31. And from what they say, he may be permanently disabled.

We did not appeal because we didn't figure there was any reason to. They didn't tell us why——

Congressman **Pickle**. Because why?

Mrs. **Garretson**. We didn't feel that he had a chance of getting reinstated and we didn't have the money for lawyers, either, so we just didn't fool with trying to appeal it. So he has been trying to do different kinds of work ever since.

He was selling insurance at the time he had this stroke, trying to.

Congressman **Pickle**. How old was he?

Mrs. **Garretson**. Dal will be 54 in October.

Congressman **Pickle**. And he is in the hospital now?

Mrs. **Garretson**. He is in Dallas rehabilitation.

Congressman **Pickle**. Say again why you didn't—did you, was he receiving——

Mrs. **Garretson**. Well, he just said that when he was cut off, he didn't try to appeal it or anything because he just didn't feel that there would be any need. We had heard of so many being cut off.

Congressman **Pickle**. He was receiving disability benefits?

Mrs. **Garretson**. Yes, he was. And he received this letter through the mail——

Congressman **Pickle**. At the time he was cut off, he was not in a hospital or ill, but he was receiving disability benefits

Mrs. **Garretson**. He was receiving disability, and after he was cut off, then he spent about 1½ years in a state of deep depression, doing nothing but almost just staying home.

Congressman **Pickle**. Well, first, Mr. Frost, would you want to make a comment or ask any questions?

Congressman **Frost**. Mrs. Garretson, a lot of people in your situation don't even know that when something like this happens that you can contact your particular Congressman and hopefully, the Congressman can help you with the administrative process without going to court. Of course, a Congressman or a Senator can't help you once you get into Federal court, but can help through the administrative process of trying to get this reversed on appeal. And I think, Senator and Congressman Pickle, I find there are a lot of people out there in my district who don't even know what their rights are, who don't fully understand their rights to appeal up through the administrative process, and if they just understood those rights and exercised them as some people do, that these things ultimately can be reversed on appeal, even though it takes an awful long time.

But you are saying, Mrs. Garretson, you didn't——

Mrs. **Garretson**. Well, we didn't know. We just figured we would be fighting the Government and we didn't stand a chance.

Congressman **Frost**. Well, you are not the only one. There are a lot of people in your category.

Mrs. **Garretson**. We just let it drop. We just didn't fool with it.

Congressman **Frost**. And it is really a tragedy——

Mrs. **Garretson**. Yes, it is.

Congressman **Frost** [continuing]. Because so many——

Mrs. GARRETSON. There have been many hardships as far as I am concerned.

Congressman FROST. How long—you may have said—how long was your son on disability?

Mrs. GARRETSON. He was on, I would say, 4 or 5 years.

Congressman FROST. Four or five years. So he had been severely incapacitated for quite some time, then.

Mrs. GARRETSON. He had four bypasses and he hasn't been the same since.

Congressman PICKLE. Senator Heinz, would you want to——

Senator HEINZ. Just briefly, Mr. Chairman. Mrs. Garretson, roughly 100,000 people in the last 2½ years have not appealed their benefit cutoffs. Some of them undoubtedly didn't appeal them because they felt that maybe they could work, although we have studies that show that most of the people who are thrown off rolls still have great difficulty finding work.

Some clearly don't appeal because they are intimidated by the process. Let me ask you this: You say you were afraid to fight the Government——

Mrs. GARRETSON. We weren't afraid. We just said that there was no need. We just didn't do it.

Senator HEINZ. Did you think that the cost of hiring a lawyer to do it would have been a burden or not?

Mrs. GARRETSON. Well, we knew that that would be a lot, of course. That was part of it.

Senator HEINZ. Thank you, Mr. Chairman.

Congressman PICKLE. Is your son married?

Mrs. GARRETSON. He was married. We are in the process of trying to get his disability reestablished, because, of course, he is in the hospital.

Congressman PICKLE. It is in appeal now?

A VOICE FROM AUDIENCE. May I speak to that? I am Susan Crantz.

Congressman PICKLE. Will you stand and identify yourself and I will recognize you.

Ms. CRANTZ. I am Susan Crantz and I have been working with the Garretsons on the reinstatement. The problems we are facing with the reinstatement are that due to Dal's working for a year and a half, they are claiming this is a new disability. I do not want him to reinstate for the old disability.

Mrs. Garretson is not employed, but she can give a 15-year work history. Dal's accounting of the last 15 years would not be accurate. They have been refusing to pull his initial application which shows his work history up to the last year and a half. So they are wanting to consider this stroke a new disability since he proved he was able to return to gainful employment the last year and a half.

Congressman FROST. Ms. Garretson, what part of town do you live in?

Mrs. GARRETSON. I live over off of LBJ and Midway in Northridge Apartments.

Congressman FROST. Is that where your son lives also? Is that his residence?

Mrs. GARRETSON. He lives there, yes; with me.

Congressman Frost. That is in Congressman Bartlett's district and you may want to contact Congressman Bartlett's office and seek their assistance on this also.

Mrs. Garretson. Thank you.

Congressman Pickle. The Chair would want to observe that in each one of the cases we realize that you have gone to the local offices, you have presented your case in the review and it has been ruled that you are either able or not able to work.

The purpose of a hearing is not to indicate or imply in any way that the hearing examiners are not qualified. The hearing examiners are trying to follow the law, the regulations as they are listed in there as stated. I do not want any of the public or examiners to think that we feel you are insensitive, but we say that under the present regulations, with not having common standards, not having a medical improvement standard, not being able to present your case at the initial level in some kind of a face-to-face hearing—these kinds of things cause a great deal of misunderstanding, frustrations, and even feelings of hopelessness at times in this particular case.

So we are trying, through this legislation, to have a better approach. The case you just presented to us is hard to understand, but hopefully, if it is on appeal, we can still have a chance to get the facts on the record. If it is a new disability case, perhaps it might still be able to be determined favorably. But we regret these difficulties and we thank you for coming to this hearing.

Now I am going to ask Mr. Roberts to proceed, John E. Roberts from Dallas.

STATEMENT OF JOHN ROBERTS, DALLAS, TEX.

Mr. Roberts. Well, I have been on disability since 1972. I broke both my legs and have had surgery on my back and my nose was cut off and sewed back on. It has been roughly about 12 years since I started on disability. And I have a disease—I have bladder trouble and an infectious skin disease gets on my arms in the summertime. It don't want to heal.

In fact, my wife is handicapped herself and bedfast. Sometime last summer we received a letter from the Social Security Administration that they were considering the termination of the disability.

Congressman Pickle. For you?

Mr. Roberts. On me, yes. And so I read all the papers that they had sent me and found that I could call a hearing on the case. From there I contacted the Legal Aid Society and the social security office and put it on appeal.

But all this time has been going by. We didn't know if we were going to be granted for social security or denied. And if it was done, denied the case, me and my wife and the way we are set up, I don't know how we could have even gotten by because I didn't have no educational background to be able to go out and just get a job right offhand after 12 years on disability. They claim that I am able to stand up as much as 4 hours out of an 8-hour period, or sit down, and lift 20 pounds. And I—to just go to the mailbox in my yard and I do good to get back in the house. That is just about all I have to say.

Congressman PICKLE. Have your disability benefits been terminated?

Mr. ROBERTS. See, when I filed for it, I asked for them to continue the disability payments until the hearing was over.

Congressman PICKLE. Have they done that?

Mr. ROBERTS. And I—did so and which the payments was continued and at this time are still coming just like they was before, but I have already had my hearing on it and the judge decided that I was still able to get my social security checks.

Congressman PICKLE. Well, then, you were terminated in 1983, last year?

Mr. ROBERTS. Supposed to have been terminated somewhere in November.

Congressman PICKLE. Well, have you been reinstated yet?

Mr. ROBERTS. Yes, sir.

Congressman PICKLE. When?

Mr. ROBERTS. In January.

Congressman PICKLE. Last month.

Mr. ROBERTS. Yes.

Congressman PICKLE. But your case—is it still on appeal in any way? Mr. Cortez, do you represent this gentleman?

Mr. CORTEZ. Yes, sir, if I may answer that.

Congressman PICKLE. All right.

Mr. CORTEZ. Mr. Roberts was never actually off benefits. He asked for the continuing benefits and was able to go to the hearing and at that point benefits were reinstated. Now, Mr. Roberts is, in my 3 years of doing disability cases, he is one of the most severely impaired clients that I have ever had, and besides the impairments he listed, Mr. Roberts also has heart disease. He also has had surgery on his back. He is also a diabetic and he also has high blood pressure.

When he was sent to the CE's, the consultative exam report is very graphic in how it describes his impairment, and it should have never reached the administrative hearing level, and Mr. Roberts was put through about 6 months of wondering whether or not he was going to be terminated and never really knowing whether, as he mentioned, his wife being bedridden, whether they were going to be just completely put out on the street because of that.

If I may say so, the administrative law judge was very responsible in this case. He looked at the medical evidence and just could not believe that it was brought before him and he actually issued a decision in 1 week, and that is the fastest I have ever seen an administrative law judge respond.

Congressman PICKLE. Doesn't it seem strange that he would have such strong feelings and take quick action to reinstate this man, and yet in the district office he was terminated, or at least threatened to be terminated, recommended for termination? What would be that difference between an examiner and the administrative law judge?

Mr. CORTEZ. I can't answer that, Mr. Chairman. I don't know.

Congressman PICKLE. Well, the committee feels that the examiners are having to work from one set of regulations and rules and standards and the administrative law judges quite often are not bound by that and they operate different standards, and hence, you have almost 180 degrees difference in the opinion on a particular case. That is what this legislation will help establish, common standards for both the examiner and for the ALJ. Each can maintain his general independence, but that is one of the hopes that we have for the passage of this legislation.

Now, Congressman Frost, do you want to ask this gentleman any questions?

Congressman FROST. Well, only to observe, Congressman Pickle, that Mr. Roberts also is one of my constituents from the 24th District. I am glad that he is here today to tell his story, because I really think it is incredible that there would even be consideration given to terminating a man like this and that he would be put through the uncertainty and through the tension that he has had to suffer on this matter. I don't have any questions.

Congressman PICKLE. Senator Heinz.

Senator HEINZ. Mr. Chairman, just one or two brief questions. Mr. Roberts, I understand that you were told by the Social Security Review Office that you could stand on your feet for 4 to 6 hours daily and could lift 20 pounds.

Did they have any kind of evidence that you could do that?

Mr. ROBERTS. That is what I couldn't understand, where they could have come to that conclusion.

Senator HEINZ. They just said, you can do it. What kind of work did they say you could do?

Mr. ROBERTS. They didn't say. They just said I would have to find something.

Senator HEINZ. What would have happened to you if you had lost your benefits? How would you have gotten by?

Mr. ROBERTS. That is what—we never could figure out what we was going to do, if we were going to be put on welfare in one of these rest homes or what.

Senator HEINZ. Let me ask Mr. Cortez. Mr. Cortez, some of your clients have been through the face-to-face evidentiary hearing at reconsideration. Has this hearing process, which is relatively new, solved the problems of unfairness in the periodic reviews?

Mr. CORTEZ. Senator Heinz, Dallas is one of the pilot programs that reviewed that system. And from my own experience I did about 3 of those hearings and our office did about 6 to 10 of those, and we essentially found them to be inadequate. They actually were more prejudicial to the claimant than actually assisting him, and the reason was that there were not sufficient procedural safeguards in that face-to-face reconsideration.

The claimant doesn't have the ability to request a subpena, for example, and there were no—it wasn't formalized enough to preserve the integrity of the record of what the claimant was saying.

Senator HEINZ. Does the claimant or his attorney have the right to cross-examine?

Mr. CORTEZ. No, sir.

Senator HEINZ. That is a fairly basic procedural safeguard.

Mr. CORTEZ. Yes, sir. It is.

Senator HEINZ. The administration is proposing that benefits only need to be paid through reconsideration. I gather you feel that that would be a real problem.

Mr. CORTEZ. I think that would be a grave problem for many, many of our clients.

Senator HEINZ. I gather if that had happened in Mr. Roberts' case, he would—he went through this process. He was determined ineligible. He did elect, because it was part of the law that he could elect, to take payments through the administrative law judge process, but had he been cut off right then, he has just testified he didn't know what he would be able to do, how he would be able to survive. Would it be your opinion he would have had some real difficulties?

Mr. CORTEZ. If Mr. Roberts would have been terminated, he might not be here today.

Senator HEINZ. What do you mean by that?

Mr. CORTEZ. His impairments are so severe that he needs continued medical attention, and had he been off of the social security benefits, he would not have been able to obtain that attention.

Senator HEINZ. You are saying he would have died?

Mr. CORTEZ. I am saying that that is a possibility.

Senator HEINZ. Thank you, Mr. Cortez.

Congressman PICKLE. Mr. Roberts, I am going to see if I have this correct. You were working at a steel plant up until 1971.

Mr. ROBERTS. Yes.

Congressman PICKLE. And you had an automobile accident, I presume. Is that it? Is that what caused the impairment?

Mr. ROBERTS. That is correct.

Congressman PICKLE. And it broke both your legs——

Mr. ROBERTS. Both of them.

Congressman PICKLE. And you haven't been able to walk or to get around much since then? Is that your difficulty?

Mr. ROBERTS. Not a great deal, no.

Congressman PICKLE. Did it also cut your nose or cut off your nose or——

Mr. ROBERTS. The biggest proportion of it was cut off and was laying over somewhere right beside of my face. Which is why at this time I have no bone structure in the middle of my nose.

Congressman PICKLE. Now you have emphysema?

Mr. ROBERTS. I have emphysema.

Congressman PICKLE. Skin disease?

Mr. ROBERTS. A skin disease.

Congressman PICKLE. Congestive heart failure and bladder problems?

Mr. ROBERTS. And a bladder problem.

Congressman PICKLE. Anything else?

Mr. ROBERTS. I hope not.

Congressman PICKLE. But you have a wife who is also ill?

Mr. ROBERTS. My wife is bedfast——

Congressman PICKLE. Bedridden?

Mr. ROBERTS. Bedridden, and she should have been on disability for the last 8 or 10 years and she can't even get on it because of her not being able to work, and they said she couldn't get it on account of her not working on a job.

Congressman **Pickle**. Well, Mr. Roberts, all I can say is just, "Holy mackeral."

Mr. **Roberts**. Well, you just do the best you can and that is it.

Congressman **Pickle**. Well, we thank you and we hope that somehow this will have a happier ending.

Now I am going to ask Charles Vent if he will make his statement. We will pass the microphone down to Mr. Vent and ask you also, now, to speak—oh, will you speak for him?

Mrs. **Yarborough**. Yes.

Congressman **Pickle**. Will you please identify yourself again, then, please, and proceed?

STATEMENT OF SYBIL YARBOROUGH, DALLAS, TEX.

Mrs. **Yarborough**. Yes, sir, I am Sybil Yarborough and I——

Congressman **Pickle**. Move the microphone still a little closer to you, if you will, please.

Mrs. **Yarborough**. I am Sybil Yarborough and I am Charles' sister, and I would like to tell you a few things about Charles, and if you don't mind, I would like to submit my prepared statement for the record.

Congressman **Pickle**. All right. The prepared statement of Mrs. Yarborough will be inserted into the record at this point.

[The statement of Mrs. Yarborough follows:]

Statement of Sybil Yarborough

My name is Sybil Yarborough. My brother, Charles Vent, has had psychiatric problems all of his life. He is now 40 years old and still lives with our mother and dad, who are now 77 and 80 years old respectively. Charles is still totally dependent upon our parents for taking care of him. He is physically able to dress himself, but has to be told to button his shirt, zip up his pants, comb his hair, and especially to bathe. In order for him to perform any chores around the house, he must have constant supervision. He rarely finishes a task, and usually the carpet he vacuums or the floor he mops must be redone.

He likes to attend church, but he has to be taken there and returned by an elderly lady who is a member of the church. He is incapable of going anywhere by himself. He cannot even be relied upon to go down the street to pick up two or three items, because he cannot remember what he is sent to pick up, and he has forgotten to bring home the change.

If you ask Charles what he likes to do most, he will tell you that he likes to stay in his room, listen to his radio, and be with his "things." His things are mostly little trinkets, gadgets, and what-nots that we pick up for him at garage sales. We look for things like we would give to a 10 year old. He always asks, "what did you bring me?" and is happy as a lark with these little things.

There can be a darker side to Charles' nature also. He has always been afraid that someone was going to harm him. About 2 years ago, he began to believe that his mother was going to harm him, and he attacked her and tried to choke her. We had to commit him to Terrell State Hospital, where he was diagnosed as a paranoid schizophrenic. He is doing much better now that he is taking his medications regularly, but without constant supervision, he would stop taking the medications because he would either forget, or he would be afraid that they were going to harm him.

Charles has not held any kind of job at all in more than 15 years. When he was younger, his mother would send him out time after time on jobs, but he was never able to hold one for more than a few weeks. He told me that he got nervous on these jobs and could not finish them. He also, on occasion, got lost trying to get home on the busline.

He cannot tolerate any kind of frustration, conflict, noise or confusion—he withdraws to his room whenever the news comes on the TV.

Many times when he is told to do something, he will repeat it over and over again, until told to stop doing it. For example, if I ask him to close the gate or the door, he may close it over and over again until told to stop.

Frequently, Charles seems to be "not there" many times even when he is there physically. For example, if he answers the phone, and I ask him how the parents are, he may typically say, "I don't know," even though they are sitting there in the room with him.

I could go on and on, but I am sure you have the picture by now. Charles has been receiving social security and SSI disability benefits since 1966, because it is obvious to anyone who knows him that he cannot even take care of himself independently, much less maintain any kind of steady employment. Anyone who comes to contact with him can tell that he is mentally retarded.

You cannot imagine how shocked we were when Charles received a notice in January of 1983 that he was no longer disabled, and his disability benefits were being cut off. We could not believe it had happened, and neither could any of our friends, or the family doctor.

The notice we received that was supposed to tell us why this action has been taken, was not very much help. It said they had relied on reports from the State mental hospital and a local psychiatrist Charles and been sent to see by the State agency. Of course, no doctor at the State hospital had said Charles could work, and we later found out, that the doctor he was sent to by the Government, also considered him totally disabled.

The notice said things like, "Although he fears that other people may harm him, this is not severe enough to prevent his being around other people on a limited basis."

Fortunately, my sister and I live in this area, and were able to help find a lawyer, and see that the necessary papers were filed to appeal the decision. I am afraid that, if it were left up to our parents, this would have been too much for them. I know that Charles would not been able to appeal the case on his own. Even with a lawyer who helped us every step of the way, the whole episode was a traumatic one for the entire family.

To this day, we do not understand why Charles' appeal was denied twice by the State agency. We are thankful that we had an opportunity to appear before an administrative judge who was able to make an independent decision, and who restored Charles' benefits.

We hope and pray that we will not have to go through this again.

Congressman PICKLE. Mrs. Yarborough, when Charles received his notice that his disability benefits were to be terminated, had he been interviewed by either a hearing examiner in the local office and by a physician?

Mrs. YARBOROUGH. No. Not when he got the first hearing. No.

Congressman PICKLE. On what basis, then, would the SSA officials send you a written notice that his benefits were to be terminated?

Mrs. YARBOROUGH. I don't know.

Congressman PICKLE. He was not interviewed? He was not examined?

Mr. WEISBROD. Excuse me, sir. He had been examined by a doctor. They had sent him to a local psychiatrist. As Mrs. Yarborough stated, when we later got to talking to that psychiatrist and saw his report, we found out that his report was by no means supportive of the action of terminating him. In fact, when asked to give an opinion about whether or not Charles could work on any kind of independent basis or maintain any kind of employment, he said absolutely not.

But what you have to understand here is that this is not inconsistent with the approach that is being taken in the State agencies as dictated to the State agencies by SSA.

Congressman PICKLE. Well, now, explain that further.

Mr. WEISBROD. OK. The State agencies are instructed that the opinions of the doctors, even doctors that the Government refers the claimant to for examination, are not binding on them, and in fact, the examining and treating doctors' opinions on functional limitation are given practically no weight whatsoever. So you have this situation——

Congressman **Pickle**. The doctor's written statement is not given any weight?

Mr. **Weisbrod**. The opinion as to disability.

Congressman **Pickle**. Yes.

Mr. **Weisbrod**. The way the system works now is that the doctors who work for the State agencies, who never see the claimant, never examine the claimant, are the only ones who are considered to be capable and competent and qualified to interpret the raw medical data from the examining and treating doctors' reports. So it doesn't matter if they obtain an independent examination, as was done in this case, from a doctor that is on their list, that they pay for, who has no connection with the claimant whatsoever, and that doctor volunteers the opinion in his report that the person can't work. They don't pay any attention to that.

What they look at, and the way they discipline the State agency medical consultants, to only look at, what they call the objective physical findings, and to interpret those objective physical findings in accordance with very narrow mechanical guidelines that come out of SSA in Baltimore.

I was talking to Dale Place from the Texas Rehabilitation Commission, who is an official with the disability determination division in this State, and I believe he would agree that the mere fact that all the doctors who examined and treated Mr. Vent are of the opinion he is disabled, is not inconsistent with their approach that that person could be terminated.

Congressman **Pickle**. Well, you are saying that the examiners pay no attention to the doctors' findings?

Mr. **Weisbrod**. No; I am not saying that——

Congressman **Pickle**. That would be a harsh statement.

Mr. **Weisbrod**. No; I am not saying that, Congressman Pickle. I am sorry if I am not making myself clear.

Congressman **Pickle**. Well, you said they paid no attention. Do you mean they do not have to abide by those findings?

Mr. **Weisbrod**. They pay attention—they pay attention to the findings, meaning what they call the objective findings. In a physical disability case, objective findings are things like how far the guy can bend over; whether he can walk—let me give you an example.

If they send a claimant to a doctor and if the person says that he can't walk, or he can't stand on his feet, they ask the doctor to answer one question for them, and that question is, "Can he walk without the assistance of a cane or crutches?" If it is reported that he can walk without the assistance of a cane or crutches, that is considered an objective finding, and from that finding, the State agency doctors are instructed by SSA guidelines to interpret that finding to mean that the claimant can stand and walk through an 8-hour day to do work that requires him to be on his feet 8 hours a day. They are routinely drawing this conclusion merely from the fact that he is able to walk unassisted without crutches and/or a cane.

Congressman **Pickle**. Now in this particular case, it wasn't a matter of walking.

Mr. Weisbrod. Correct.

Congressman Pickle. It is a matter of his capability, could he work at any kind of a job. And the doctor recommended in his report that he was not able to work, and yet, the examiner said that he was able to walk and he could be around people for a limited time and he was therefore eligible to work. Is that the differences?

Mr. Weisbrod. That is basically correct.

Congressman Pickle. Well, I don't want to prolong this hearing by continually going into details to a case, this particular case. Now by way of summation, he was sent notice, but did he keep on drawing benefits?

Mr. Weisbrod. At that particular time the continuation provision was not in effect. Isn't that correct?

Mrs. Yarborough. We kept it. We went to the social security office and signed for it to keep coming to Charles until the hearing.

Congressman Pickle. So he appealed it and so he kept on. But you had, what, how long a time between the time you received the notice until you finally got it reinstated.

Mrs. Yarborough. I believe it was from—we got the first notice the first of the year and I believe it was in July——

Congressman Pickle. So some 5 months, then, in which you didn't know whether he was going to have his benefits continued or not?

Mrs. Yarborough. Yes. It was very, very hard on mama and daddy.

Congressman Pickle. Well, I thank you very much, all of you, for your statement. Congressman Frost?

Congressman Frost. Congressman Pickle, I am struck by this particular case and want to ask Mrs. Yarborough, where does Mr. Vent live? What part of the——

Mrs. Yarborough. He lives in east Dallas, close to East Grand.

Congressman Frost. That is in Congressman Bryant's district, but what I was struck by was that my office has had several cases exactly like this. I sat in on one of these cases, where the fact pattern was almost exactly the same, with the adult offspring, an adult child, living with elderly parents, with psychiatric problems, obviously incapable of working and yet losing or being threatened with the loss of benefits.

And we had a case out in Arlington, Tex., with this almost exact same fact pattern, and I sat in on a case in my Oak Cliff office with this kind of fact pattern and I just don't understand why this type of person would be threatened with termination.

Mrs. Yarborough. We did not understand it either.

Congressman Frost. And this is not an isolated incident. That is what struck me, Congressman Pickle.

Congressman Pickle. Yes. I can understand that. Senator Heinz, would you care to ask a question or comment?

Senator Heinz. Just one question, Mr Chairman. Thank you. Mrs. Yarborough, if your brother, Charles, had not been able to receive his disability benefits, either during adjudication or if you hadn't known how to get the benefits and they were just terminated, what would have happened? How would he have been cared for?

Mrs. **Yarborough**. Well, not very well. He lives with mama and daddy, but they make such little, meager sums themselves, it would have really been hard. Because he is totally dependent on them, you know, and it wouldn't have been easy.

Senator **Heinz**. Thank you.

Mr. **Weisbrod**. May I comment briefly on two other points that were raised previously? First of all, with respect to the reconsideration—the adequacy of the face-to-face conference at reconsideration. I also have had experience with those hearings. Those are inadequate for the basic reason that the examiners who conduct them have no decisional independence.

We had one where we went through the face-to-face hearing and lost. Later, at the point where we went before an administrative law judge, I got all the papers, so I saw exactly what happened. The person who conducted that face-to-face hearing at the reconsideration level, went right down the line with us and documented exactly what we thought was the case, and submitted a decision to his superior finding that the claimant continue to be disabled.

However, the reconsideration examiner's decision was reversed by somebody who never even saw the claimant face to face. Before the reconsideration examiner, at one of these face-to-face hearings, can issue a favorable decision, it has to be approved by somebody else. Before he can issue a negative decision, it does not have to be approved.

Now, on the point of having the same standards of review at the reconsideration level and at the hearing level, I think that the provision that is proposed in the act to make the administration go through administrative rulemaking before these guidelines are issued is excellent.

However, I want to caution that if you bind administrative law judges to the same type of narrow, mechanical, irrational guidelines, that the disability examiners in Austin were bound by in Mr. Vent's case, then instead of solving the problem, you will get the same irrational decisions that are an affront to common sense from the administrative law judges, as you are getting now from the State agency disability examiners.

That is all I have.

Congressman **Pickle**. Well, we appreciate those comments, and I don't think at this point we will go into a discussion of that aspect of either the regulation now or what is pending, except to comment that the pending legislation would not in any way affect the general operation of the Administrative Procedure Act. We are not trying to change the authority of the ALJ's with respect to their legal abilities or to make determination. But we are still trying to say, at the beginning we would all have to be operating from these common standards and I don't think that is inconsistent.

Well, I want to thank each of you for coming. We know this is disturbing to you to appear and to make these statements, but we also know it is equally disturbing to have received notices and to have been either threatened or worried that your disability might be cut off.

The purpose of these hearings is not to find fault with necessarily the system that we have, because we have good people making examinations. But we are not working together in a way that would quickly and fairly make a proper finding in many of these cases and we are trying to find out how can we do it better.

Now I want to thank each one of you. You may leave the witness table now. If you can, we hope you can stay with us and as you take your seat, now, I am going to ask that we have a second panel come forward, and this panel will consist of Vernon Arrell, the commissioner of the Texas Rehabilitation Commission. And he will be accompanied by Dale Place, who is the director for the Texas Disability Determination Service program.

And I am going to ask Bob McPherson, the State director of planning from Gov. Mark White's office. If you three gentlemen will come forward and take your position at the witness table, we would appreciate it.

Now as they are arranging the name cards, let me ask if you gentlemen would care to proceed in any order. Mr. McPherson, would you want to make a statement on behalf of Governor White? We appreciate that he would ask you to come. I know that Governor White talked to me and has written us several times about the status of the Texas program: What are we going to do? Are we going to continue to stay as a regular part of the disability program, or is he going to ask that Texas stop reviews? Half the States have and half the States haven't. I am glad that you haven't got out of the program, because I don't think it would help the situation, but I can understand the anxiety that you face. So I guess, Mr. McPherson, if this is satisfactory to you, Mr. Commissioner, we will ask you to present your statement first on behalf of Governor White.

Mr. McPHERSON. Thank you, Congressman Pickle. Good morning. I am Bob McPherson, director of——

Congressman PICKLE. Let me get the microphone over to you, if you will, please. Before you proceed, can the people in the audience—can you hear the statements up here in front?

SEVERAL VOICES FROM AUDIENCE. No.

Congressman PICKLE. You cannot. Do we have any amplification here in this hall? Then, Mr. McPherson, again, we are going to ask if you will speak loudly, even though it might be a little bit loud to us.

Mr. McPHERSON. All right.

Congressman PICKLE. I need that help and in order that people in the auditorium can hear, we would like for you to speak loudly. So if you will proceed, sir.

STATEMENT OF ROBERT McPHERSON, AUSTIN, TEX., DIRECTOR OF PLANNING, OFFICE OF THE GOVERNOR, STATE OF TEXAS

Mr. McPHERSON. I am Bob McPherson, director of planning in the office of Gov. Mark White. Governor White asked me to express his regrets at not being able to be here in person and ask that I present testimony on his behalf. Unfortunately he had a schedule conflict that made it impossible for him to be here. However, he stresses that he remains deeply concerned about the problems with the disability insurance program to be considered here today and he is committed to working with you and with others to find a workable solution to the chaos in the disability programs.

I will read his prepared statement. I think I can do that quickly. As I heard the previous testimony, I was struck by the fact that our testimony pales in the light of what you have just heard from people who live in fear of loss of benefits.

Today the Federal disability insurance program is in a state of complete confusion. The problem stems largely from a series of legislative changes intended to remove from the disability rolls anyone who is not eligible. However, due largely to overzealous implementation of the new review requirements for our Social Security Administration, the effects of the changes have been much more drastic, I believe, than Congress ever anticipated or intended.

It is clear that many long-term beneficiaries have been cut from the program without their having the slightest real chance of finding jobs and with no improvement in medical conditions that originally qualified them for benefits.

In Texas alone, 9,700 beneficiaries have been removed from the rolls since March 1981, when more stringent reviews were begun. This has been, I might add, at the time of record unemployment among the most employable workers in my State.

Fifty-three percent of the disabled in Texas are unemployed. Now if these people were really ineligible, fraudulently drawing benefits at taxpayers' expense, congratulations would be in order. But that is not the case. About half of those recipients cut off the program appealed the decision. In Texas, the reversal rate on cases that are appealed through the final stage allowed, the administrative law judge level, is 47 percent, almost half.

The national average, moreover, is 61 percent. Obviously, there are major problems with a system with that kind of failure rate. And the real problem here is that we are not just talking about percentages and rates and dollars saved. We are talking about disrupting the lives of people who have worked and earned their disability entitlement, individuals, some of whom have been disabled for over a decade, suddenly are informed that without any improvement in their condition, they are no longer eligible.

This problem now stands to be exacerbated greatly by the expiration last December of the Federal law providing for the continuation of benefits throughout the appeals process for those individuals who have been reviewed and found ineligible.

The Social Security Administration recently instructed State administering offices who implement the new policy of notifying these individuals that they will be eligible only for benefits in the month they are cut off, plus 2 additional months.

The problem is that in Texas the average length of the appeals process is 6 to 9 months. In other States, we understand that it is as long as 2 years. At a State level it is a particularly difficult situation. Our case workers have to bear the responsibility at that individual level. Since we administer this totally Federal program, we are responsible for carrying out federally set directives.

The public's outrage, however, is often directed at the administrative agency or at State Government in general. As a result, 29 States currently are not administering the review criteria as mandated by the Social Security Administration. In 13 States, Governors have taken action to modify the process. In four others, the State administering agency has acted and in 13 others, court orders to change the review process are in effect. In sum, over 60 percent of the disabled population in the Nation, about 1.7 million recipients, are no longer being subjected to the Federal review criteria as currently mandated by SSA. But the 118,000 disability insurance recipients in Texas are.

As Governor, I am being forced to weigh Federal mandates versus fair and equitable treatment of my citizens. I am being placed in the situation in which my constituents are being held to a stricter, more arbitrary policy than their counterparts in States under executive or court orders.

Since termination notices now are being sent out and benefits will not be continued through the appeals, I am considering calling a moratorium of terminations of review cases until such time as Congress can act to remedy these inequities. The problems require a legislative solution.

I strongly disagree with the position taken by this administration that the regulatory changes implemented over the past few months are adequate remedy. For example, the soon to be implemented face-to-face interview at the first level of review is expected to reduce denial rates by only about 20 percent, and in the meantime, recipients will continue to have their lives unfairly disrupted.

Last summer, I joined with Governors at the National Governors Association meeting in unanimously approving a resolution delineating six major legislative reforms necessary for correcting these problems. In particular, the resolution calls for a continuation of benefits through the administrative law judge level, use of a medical improvement standard before terminating benefits and face-to-face evidentiary interviews at the initial decision level.

It also emphasizes the need for national uniformity in disability programs. All of these points are contained in your disability proposals and those offered by Senators Cohen and Levin. I support the reforms in these bills. But time is of essence. Reestablishment of a national policy in the disability program can only be attained by legislation.

Recipients in Texas and in other States still using Federal criteria should not be further penalized. I urge the administration to drop its opposition to legislative reforms such as those in your committee's bill and to begin at once negotiating with Congress on a workable criteria for the program.

Without quick congressional action, chaos will only worsen here. I do not take lightly the prospect of taking unilateral action on this matter. Neither do I take lightly the gross unfairness of the review process in the inequities among the States. We must work together to end the uncertainty and disruption and reestablish a program that serves the people for whom it was created. I appreciate the opportunity to appear before this committee.

Congressman PICKLE. Mr. McPherson, we thank you for your comments and for giving us a very clear and positive statement from our Governor. This entire statement will be made a part of the record. I am going to ask that you stay at the witness table and if it is agreeable to the panel, Senator Heinz and Congressman Frost, I think we might proceed to hear from the Commissioner of the Texas Rehabilitation Commission and such statements or comments, Mr. Place, that you might want to make, and then we will throw it open to questions. Is that satisfactory? All right. Mr. Arrell, if you will proceed, then.

STATEMENT OF VERNON M. ARRELL, AUSTIN, TEX., COMMISSIONER, REHABILITATION COMMISSION, STATE OF TEXAS

Mr. **Arrell.** Thank you, Mr. Chairman. I am Vernon Arrell, or Max Arrell, commissioner of the Texas Rehabilitation Commission and we have been mandated by the Texas Legislature to——

Senator **Heinz.** Mr. Arrell, could you pull the big microphone as close as you possibly can? It may not do any good, but——

Mr. **Arrell.** Bear with me, I have got a—we consider Austin, Tex., where I come from, to be almost a perfect city, but we do have a thing there called cedar fever and I seem to have come down with it this morning, so I will try to speak up and I will—so you can hear me and——

Senator **Heinz.** Would you care to state for the record whether it is contagious?

Mr. **Arrell.** It is, after you have been there a while. I am Vernon Arrell, commissioner of the Texas Rehabilitation Commission and the State agency that administers the social security program, called the disability determination program.

Congressman **Pickle.** Mr. Arrell, let me interrupt you just a minute. I was concerned—I was asking if we had a statement. But you do have one—I do not have a copy.

Mr. **Arrell.** I do have a statement.

Congressman **Pickle.** Now. Excuse me. I have it now. You can go ahead.

Mr. **Arrell.** Also, I am incoming president of the Council of State Administrators for Vocational Rehabilitation. Now in 37 States, the disability determination program is administered by the vocational rehabilitation agency in that State. The testimony I am going to give here today is strictly my own as a representative of the Texas Rehabilitation Commission, but it is not inconsistent with the—with our stand from our CSAVR. We made some strong statements, I believe, Mr. Pickle, to you and some other Members of Congress about our feelings about the social security program.

Congressman **Pickle.** The prepared statement of Mr. Arrell will be inserted into the record at this point.

[The prepared statement of Mr. Arrell follows:]

Prepared Statement of Vernon M. Arrell

Mr. Chairman and members of the committee, I am Vernon M. Arrell, commissioner of the Texas Rehabilitation Commission. The Texas Rehabilitation Commission is the State agency authorized to administer the Social Security Administration's (SSA) disability program in the State of Texas. The program is administered by our disability determination division (DDD).

BACKGROUND OF THE DISABILITY REFORMS

In the past decade, we have seen a number of changes in the disability program. In the late 1970's, the General Accounting Office (GAO) published a study showing increasingly large disability rolls and a high rate of ineligibility among recipients. In response to the GAO audit, the 96th Congress passed the 1980 amendments to the Social Security Act. These amendments mandated that SSA review the disability rolls within 3 years.

Prior to the March 1981 advent of these reviews, only about 150,000 disability cases each year were subject to eligibility reviews by SSA and the State disability determination agencies. Most of these cases were diaried for review because the beneficiaries had conditions that were expected to improve. Under the periodic reviews mandated by the 1980 amendments, over 500,000 cases were reevaluated each year. Most of these cases involved conditions that were not expected to improve.

Unfortunately, in the effort to remedy the problems revealed by the GAO audit, it was difficult to predict the ramifications of the new legislation. Over the years, the SSA disability regulations and medical standards had undergone various changes. Many individuals who were disabled under the old regulations and standards were no longer eligible under the new critiera. Many of these individuals had been classified as disabled for several years and had come to depend on their monthly social security check. They were given the impression by their Government that they would continue to receive benefits unless they returned to work. Many of these people had not improved medically since they were put on the disability rolls. In fact, many had conditions which had worsened. The periodic review process had no provisions to automatically continue benefits for these people who met the old medical standards and old regulations. They were evaluated under the new regulations and new standards. Many just didn't qualify under the new criteria.

The public was startled to discover that the State disability determination services were terminating about half of all claims reviewed. Nationally, about one-half of those terminated appealed to the administrative law judges. Sixty percent of these appeals were ultimately revised.

The national controversy over the continuing disability review (CDR) process projected the State disability determination agencies as the source of error in these terminations. The prime evidence of this error was the ALJ reversal rate. However, since the standards of evaluation used by ALJ's allowed more latitude in decisionmaking, the reversal rates were not true indicators of State agency accuracy. At the same time that the States were the recipient of this adverse publicity, SSA reported national State agency accuracy rates at about 95 percent. Despite this high accuracy rate, pressures on State agencies have continued to increase. Court decisions and executive orders by State Governors have forced many States to apply disability standards not approved by the Social Security Administration.

In response to public concern, SSA began a series of initiatives to reform the disability process. The first reforms concerned the continuing disability reviews. In May 1982, SSA expanded the list of impairments considered permanent and exempt from review. SSA also began placing greater emphasis on the longitudinal medical history rather than a current examination. Medical documentation guidelines were changed to require medical evidence of record for the 12 months prior to the review. Retroactive terminations were eliminated by requiring termination no earlier than the month of due process in most medical cessations.

In October 1982, SSA ordered that all CDR's would begin with a face-to-face interview conducted by Social Security district office personnel. The purpose of the interview was to not only insure better beneficiary understanding of the review process but also to detect and exempt from review obviously disabled persons. The list of exempt cases was further expanded in June 1983 by adding additional permanent impairments and temporarily excluding from review claims involving psychotic disorders. Public Law 97-455 statutorily continued payments through the ALJ hearing, protecting beneficiaries from losing their benefits while their cases are being appealed. When this provision expired on December 7, 1983, SSA allowed the State agencies to temporarily hold cessation cases without finalizing the termination. Unfortunately, Congress has not acted to reinstate the payment continuation provisions and SSA has recently ordered the State agencies to begin finalizing these decisions in February 1984. Texas has developed a procedure designed to insure the maximum decisional quality. Before any of these terminations are finalized, a second adjudicator will review and, if necessary, perfect the file. Finally, each case will receive a complete review by our quality appraisal unit.

Public Law 97-455 also established the soon-to-begin face-to-face disability hearing as a part of the reconsideration appeal of cessations. Unfortunately, in some States where the Governor has imposed a moratorium on CDR's, SSA has threatened to discipline the State agency by revoking the authority to conduct the face-to-face hearing. This creates a dilemma for these States. On one hand, they are pressed by the need to hire and train staff to meet an April 1984 implementation. On the other, the threatened discipline prohibits any effective movement toward that goal.

PENDING INITIATIVES

Several initiatives pending before Congress or within SSA could further the disability reforms. Legislatively, the face-to-face reconsideration disability hearing and benefit continuation are immediate issues. Within the next few weeks, State agencies will begin conducting the reconsideration disability hearings. Pilot projects conducted last year showed that these disability hearings added a new dimension to the adjudicative process by allowing the beneficiary to confront the State agency decisionmaker. Bills by Congressman Pickle and Senators Levin and Cohen propose to make the disability hearing a part of the first level of the CDR process rather than the reconsideration level. The reconsideration level would then be eliminated with further appeal made directly to the ALJ. Additionally, both bills propose demonstration projects in five States to test the disability hearing in the adjudication of new applications. We strongly support this legislation. We feel that these hearings personalize the disability process and insure a more accurate evaluation of claims. We also support the demonstration projects to test the hearings for new applicants.

We strongly urge Congress to act on legislation to permanently reinstate benefit continuation provisions.

Within SSA, work groups are exploring various reforms in the area of evaluating certain impairments. The foremost area is that of the evaluation of mental impairments. In conjunction with outside advice from interested experts, a work group is revising the mental impairment listing to more realistically evaluate the effect of mental impairments. Also being considered is the use of work evaluations in mental impairment cases. The work being done in this and other impairment areas will assist the disability evaluator in making more realistic decisions.

NEED FOR ADDITIONAL REFORMS

There is, however, a need for additional reforms. The impetus for these reforms must come from Congress. The additional reforms are needed in two areas: (1) The standards for determining disability, including the evaluation of pain and multiple impairments; and (2) the uniform application of these standards on a national basis at all levels of adjudication.

The disability evaluation standards contained in the resolution introduced by Senators Levin and Cohen addresses the types of reforms needed to strengthen the program. A statutory medical improvement standard is needed to resolve conflicting district court decisions. The impact of pain and the combined effect of multiple impairments must be realistically assessed. We can no longer ignore these issues.

Furthermore, these standards must be uniformly applied to all levels of adjudication, including the administrative law judge. The language of any legislation addressing uniform standards must insure that exceptions to the Administrative Procedures Act do not create differences in interpretative policy between the State agency and ALJ levels.

Finally, and perhaps the most important of all reforms, Congress must insure that disability evaluation standards are nationally uniform. We cannot continue to evaluate claims under different criteria in different States. If this program is to continue to meet the social needs for which it was created, there must be national uniformity. Legislation enacted by Congress is the only means for achieving such uniformity.

We recognize that these reforms do not come without cost. The concerns expressed by the administration and Members of Congress are understandable. However, there may also be costs in the absence of congressional action. What will be the cost in dollars if our inactivity allows the program to become driven by litigation? And what will be the cost in human suffering by those truly dependent on this program if we remain insensitive to their plight? The burden upon Congress is great. You must weigh these costs.

I thank you for this opportunity to assist you.

Congressman Pickle. We thank you, Commissioner. You have given us a broad statement, both about present procedure and your views about the pending legislation and suggestions about what we might do in addition. I am glad to have this statement and it will certainly be made a part of the record.

Mr. Arrell. Thank you.

Congressman Pickle. Mr. Place, I would be pleased to hear any additional comments or statements you might want to make. We work with Mr. Place very closely on the Federal level and within my district of Texas and Federal Government, we try to stay together as close as we can and I think you do outstanding work. We are glad to have you here and I would like for you to make any additional statement you might care to make.

STATEMENT OF DALE H. PLACE, AUSTIN, TEX., DEPUTY COMMISSIONER, DISABILITY DETERMINATION DEPARTMENT, STATE OF TEXAS

Mr. **PLACE**. Congressman Pickle, members of the committee, I had a part in developing the statement that Mr. Arrell just delivered. I, of course, agree wholeheartedly with each word in that statement. I think that the State agencies need some relief in terms of latitude in decisionmaking. We would enjoy the same latitude that the administrative law judges have in approaching disability claims. I feel, too, that part of the 1980 amendments, that part that dealt with a review by the Social Security Administration of favorable decisions, only of favorable decisions, should be modified and made to be more evenhanded, if you will. I believe that if a mandate such as that is going to be carried out, it should be evenhanded in the approach that it will affect both favorable and unfavorable claims, and I believe this is part of the reason that we have seen some problem cases at the State level.

Most of the cases that the States do eventually find themselves at the desk of a Federal reviewer, and they are verified there by the Social Security Administration. Those cases that are continued seem to find a tougher avenue to get through than unfavorable decisions and I don't believe this serves the program or the country very well.

On that I would like to close and——

Congressman **PICKLE**. Thank you, Mr. Place. Now, Commissioner and Mr. McPherson, we face a dangerous condition in Texas and in other States. Twenty-nine States have taken themselves out of the review process, either by court order or by their own Governor's decree. The SSA has now ordered that reviews are to begin again this month, I presume effective on February 15.

Are you reviewing these cases now? How are you going to proceed and what happens if you do not review, that is, start these reviews up again? What does the administration say that they are going to do and what do you think is going to happen?

Mr. **MCPHERSON**. Well, first of all, we are interpreting February as February 28, not the 15th or the 1st of the month.

Mr. **ARRELL**. We are putting it off as long as we can.

Congressman **PICKLE**. All right; 2 weeks.

Mr. **ARRELL**. In the absence of a mandate or an executive order from the Governor, under the agreement I have no choice but to assume these terminations or these cessations effective March 1. We are reviewing the cases. We are not making any determinations on cessations as of this time. But effective March 1, we will have to continue this, pending action by the Governor's office. We have no choice.

Congressman **PICKLE**. Then you will start the reviews—but you have not taken yourself out of the program?

Mr. **ARRELL**. No.

Congressman **PICKLE**. But at least in compliance with what the SSA has ordered, you will start on March 1. But if I get what you are saying, you said you are going to start the review but not make determinations. What does that accomplish?

Mr. **Place**. Mr. Chairman, we have continued to process cases since December 7 when the legislation expired, to continue benefits. We have processed to completion continuance decisions, but we have held all cessation decisions. At this time we probably have about 800 cases pending.

Congressman **Pickle**. Well, then, you are going to comply with the review as of the first——

Mr. **Place**. Yes

Congressman **Pickle**. And you are going to comply with the order.

Mr. **Place**. Yes.

Congressman **Pickle**. But you are going to proceed cautiously and carefully.

Mr. **Place**. We are going to install——

Congressman **Pickle**. Slowly.

Mr. **Place**. In addition, we are going to install some additional safeguards in the process.

Congressman **Pickle**. What do you think, Mr. Place, is going to happen in these States that have taken themselves out of the review? What will they do?

Mr. **Place**. Well, SSA has stated that they will revoke the authority to conduct the face-to-face hearings in those States.

Congressman **Pickle**. Does that mean that the SSA, then, will withhold funds for the operation of the program?

Mr. **Place**. Very possible. Yes.

Mr. **Arrell**. The problem that we are involved in right now is that we are supposed to have these face-to-face hearings system set up April 1.

It will be a loss—threat of a loss of funds, and if I don't continue the hearings as of March 1, then there is the possibility of losing existing funds that are required to make these determinations.

Congressman **Pickle**. Then are you saying that the SSA in effect is saying if you do not resume these reviews and processing of cases, you are not, then, carrying out the orders as we give you, and if you are not making the reviews, we are not going to give you the money and therefore, we will cut your appropriations and withhold money. Is that in effect what you are saying?

Mr. **Arrell**. That is in fact the implication. I would not say—yes.

Congressman **Pickle**. I don't know whether—none of us, I guess, knows whether that will happen, but at least you are saying that is a very definite possibility.

Mr. **Arrell**. That is a possibility.

Congressman **Pickle**. As far as Texas is concerned——

Mr. **Arrell**. I would say it is a possibility. I would not say it is a probability at this time, because I can't answer for you what social security is going to do at this time.

Congressman **Pickle**. Well, let me make this observation, and I don't want to take the time of the committee, but the States must recognize that this is a national social security program. It is not a Texas program, doesn't belong to you. It is funded through a national program and we must work together, the State and Federal Government. The State just cannot set their own standards up and say this is the way we are going to operate it and say to Massachusetts you can do whatever you want to or you can differ with Pennsylvania. We have got to work as a national program. So the States must recognize that, and I am glad my Governor recognizes that. But I can see the dilemma here, Mr. Place, that if the cases are not being processed, if there is this controversy about this face to face and how are you going to review, how do you proceed?

And it therefore comes down to the question, how do we come together, and it is my feeling that we perhaps ought to do it by legislation. Now do you think in general that the legislation we have, we have in this pending bill, along the lines generally that Senator Cohen and Senator Levin and Senator Heinz have been advancing over on the Senate side, is in effect a better approach and is needed? Is it important that we pass this legislation?

Mr. ARRELL. Definitely. No question.

Congressman PICKLE. No disagreement there.

Mr. PLACE. Definitely.

Congressman PICKLE. We may consider additional steps, such as the two points you made, Mr. Place, and I don't say that what we have, the legislation is a perfect one, but we believe it is imperative that we take affirmative action to clear up the chaos within the States, or else the whole disability program can come in complete disarray over the country.

And I am hoping we can head that off. I agree with what Senator Heinz has said earlier today. Surely the administration will, in this particular area, loosen up its cold, cold heart and try to——

Senator HEINZ. I didn't put it exactly that way. [Laughter.] But you got part of the gist of it.

Congressman PICKLE. I am going to withhold comments at this point and want to yield to either Congressman Frost or Senator Heinz for any statements they care to make.

Congressman FROST. No; I don't have any questions.

Senator HEINZ. Mr. President—excuse me. [Laughter.] I won't apologize, because you wouldn't want me to apologize.

Congressman PICKLE. Do not use that term, especially with legislation.

Senator HEINZ. Mr. Chairman, thank you, one or two very brief questions. Gentlemen, you have testified very effectively, I think, as to the problems of the present program. Clearly there is unanimity among the six of us. There is hardly any disagreement about the problems and about what we all think ought to be done. I am a cosponsor of the Cohen-Levin bill. It is very similar to Congressman Pickle's bill. Congressman Pickle has been working extremely hard in the Ways and Means Committee, and my recollection is that his bill is a part of the only temporarily stalled tax package that was derailed because of a little misunderstanding on industrial development bonds under the consideration of the rule.

Congressman PICKLE. Well, Senator, it was industrial development bonds and it was also a question of the medicaid issue that had been put in the tax legislation and the Ways and Means Committee is a little jealous of its jurisdiction. So there are other factors besides IDB, but basically——

Congressman FROST. Senator—excuse me, Senator, but Congressman Pickle and I were involved in that particular question and——

Senator HEINZ. I have a feeling we should not—we won't go into it at this point. But let me just ask you this. We all support a medical improvement standard. Let me be the devil's advocate. There are some people who say, and I really direct this at the experts in the Rehabilitation Commission of Texas, there are some people who say that if we impose a medical improvement standard, that it would result in people who can work and should work staying on the disability rolls. True or false? Mr. Place.

Mr. PLACE. I believe that the provision allowing for an individual who has an impairment or impairments that would be modified to the point by the latest technology or medical improvements will safeguard against that kind of situation occurring.

Senator HEINZ. For example, if indeed somebody who has suffered from alternating bouts of depression and mania finds, as was the case 10 or 15 years ago, that that particular psychosis could not at that point be controlled. In some cases it can be controlled by the administration of lithium. You are saying that improvements in medical treatment such as that would be taken into account and the person, under those circumstances, could be judged capable of reentering the work force. Is that a good specific kind of example or is it not?

Mr. PLACE. That is a good, specific kind and I believe the legislation goes on to talk about where there is an error on the face of the evidence that the initial decision that an individual would not be able to stay on the rolls as a result of that. Those safeguards, I think, would——

Senator HEINZ. Are there any other potential problems with the medical improvement standard that are going to result in overcorrection?

Mr. PLACE. Not to my foresight.

Senator HEINZ. Mr. Arrell, do you have any concerns?

Mr. ARRELL. No. But I would like to just make a statement that I think before anybody's social security benefits are terminated, it must be documented and proved there is medical improvement. I just don't think—I think it is an injustice to do it any other way.

Senator HEINZ. We all agree with you, but we have to develop a record.

Mr. ARRELL. Well, I understand that.

Senator HEINZ. But it is clear on the point, from the experts involved. I am going to ask the same question of the disability examiner's president who comes before us. We need to be as specific on this issue as possible, because there are some people, indeed there are some not only in the Senate, but some in the House that I have talked to, who say "I just worry that Congressman Pickle's bill or the Cohen-Levin bill is going to result in people who can work, and should be working, not working."

We have to answer them, because any time we enact legislation there is a chance that we either make a mistake or don't fully understand exactly what is going to happen when we pass legislation.

Thank you very much, and, Mr. Chairman, I appreciate our witnesses. They are very expert. They have truly presented very clear, accurate statements of the problem and what we should do about it.

Congressman **Pickle**. Let me make an additional statement, here. I want to get this on as a part of the record and so I am doing it for the people in the audience and if any of the press here, I am making it for them and for the record, too.

I want to repeat again that the pending legislation is in response to great needs of coordination between the State and the Federal Government and between the examiners and the administrative law judges. It is a national program and we must have greater uniformity.

I don't want to go into the details of the bill, but I think it must be understood again what we are trying to do. I want to repeat for you four or five things that actually the legislation is attempting to do. In the first place, it is to establish a sound and fair medical improvement standard. It says, Mr. Commissioner, as you stated, before anyone should be removed, they must show that they have had medical improvement. That is a fair and a reasonable proposition that we all should agree to.

And I presume that you, and you, Mr. McPherson, think that that ought to be a key part of the legislation.

Mr. **McPherson**. No question.

Congressman **Pickle**. Another thing that this bill does, it attempts to bring uniformity in some of these Federal appellate decisions. We have one court decision making one verdict and another part of the country making still another. A decision that is reached in one Federal court or disability matter may be ignored by all other 10 Federal circuits. That is inconsistency, and then you must ask, then, what is the law? Where is the law?

And we are saying that if a decision is made, at least in that appellate court, that is the law and all other cases in that general area must be governed by that decision. But some uniformity at least. That has been somewhat controversial, but at least the bill does that.

It attempts to set up national uniform policies. It doesn't mean that both the hearing examiner and the ALJ's are going to operate from the same POM, standard operating procedure manual. But it does say that you would determine by some kind of uniform definition what is disability and look at it in the same general eyes from that standpoint.

We say in this bill that the matter of multiple impairments is a factor to be considered, not just separately or individually or apart from, but it can be a factor—not altogether a determining factor, but a factor, and that is certainly fair and reasonable, as I see it.

It provides for a moratorium on the mental disabilities. We won't have the kind of embarrassment we have here in the case Charles Vent submitted to us. On the face of it, obviously, no one could say that that man is able to go out and do normal work. Does anybody in the hearing of this, in the voice of this hearing would claim that that could be the case? We know that is not the case and we are saying now we ought to have a moratorium on those types of cases.

And it does get—the bill makes the benefits to be continued on their present level on up to the ALJ level. We face, Senator, a crisis in that program because at this point that program to the continuation goes up to December 7, and now it is, quote, "not the law any more." Fortunately we have a proviso that says it would be—for that month, the benefits continue for that month and for 2 additional months.

Now, technically, I presume, since you are going to start on March 1, you have got March and April, but if we haven't resolved this problem, why, come May——

Mr. ARRELL. June 1——

Congressman PICKLE. June 1, then in the disability program all hell will break loose, won't it?

Mr. McPHERSON. Well, the benefits will stop.

Congressman PICKLE. The benefits will stop. That is a better way to put it. So it seems to me that——

Mr. McPHERSON. But harassment begins March 1 if the termination notices are mailed.

Congressman PICKLE. Yes; and we are saying in the bill that we—the best thing that could happen to us is that when people are being reviewed for disability, that they ought to be able to come in and present their case up front, at the beginning, have all of the facts on the record at the front.

Now that doesn't mean that we are going to just say, if you don't get it done then you can't get it any other place. Because proviso is allowed for additional evidence if it was known at the time and it ought to be provided for. So we are trying to say that with respect to face to face, you may have a difference between should it be at recon or at the ALJ level. But at least, get your facts in early, medical evidence included, and I think that would help in a great many cases; not necessarily final, but at least that gives you—advances it. Otherwise, if you elect to start the case over de novo, new at the ALJ level, then all the evidence is going to be withheld, probably, until that level. Now there may be some disagreement on it.

Now I mention those things because that is what this bill is trying to do. You have to ask yourself, why, then, has not the legislation advanced? Why haven't we passed it out of the House or the Senate?

Well, as Senator Heinz said, it is a part of the pending tax reform bill, H.R. 4170. It is one title in the bill and we did not get a rule because of disagreements on the industrial development bonds and disagreement on the medicaid question, and that probably brought us more negative votes than anything else.

No matter we didn't get the rule; it is pending. I am hoping that that legislation can be advanced. I am personally hopeful that we can advance it as an independent piece of legislation, that we might be able to take that from the tax bill and have a disability legislation presented to the House.

Now that will depend on a great many factors, including some progress or no progress on the pending tax bill. But if that is going to become bogged down, then I am hoping we might be able to proceed independently on this piece of legislation.

Now, though, the question is, Why would the administration appear? Why would Mr. Stockman appear, or by his representatives, say that they could not approve any legislation this year? Well, the basic reason is twofold. One, that the costs might be too much and that we are making—we are handling this program correctly.

Well, I am going to dismiss the last point, just, well, as a lawyer would say, a fortiori, just on the surface, face of it, is not working because of the very testimony you heard this morning. So I think it speaks for itself. It is not being handled administratively in a proper manner and these things I mention should be done.

Now we get to the question of cost, and this is what I want to be certain to get on the record. The disability bill that is pending would cost $1.4 billion through 1988, according to the Congressional Budget Office, and those costs would include costs of medicare, medicaid, SSI, and the OASI, and administrative benefits.

Now the CBO is saying that that is the cost of the program. Now here comes the OMB, the administration, and they say that for a comparable period it would cost $3.4 billion for prospective medical improvement and it would cost $6.2 billion for retroactive medical improvement.

Now we don't think that the medical improvement standard can be applied retroactively. We say so in our statement in the report. We clearly do not intend it to be retroactive. We have said that in writing and verbally to the administration. We will put it in writing. We will make it part of the statutory language of the bill. And to argue that you are going to interpret that retroactively is just to throw up a straw man that is not there. It cannot cost that and will not cost that, and we don't think that the $3.4 billion is an accurate figure, because that is $2 billion higher than the CBO's estimates. Because the administration, they just assume that we would terminate benefits for more people than under the present law. And therefore, you would have that much more additional cost.

And that is a negative, unfair sort of reasoning. Now it has been contended at one point that if you pass this legislation it might trigger the stabilizer in the disability program with respect to the cost of living and therefore, your trust fund would get imbalanced and you might then have great trouble in the social security program as a whole, and having to raise taxes.

I am glad since they made that public question in fear that they have since retreated and have said by testimony that the stabilizer would not be triggered, that it might not get below 15 percent, but it would have to get below 15 percent and wage growth would have to exceed price growth. And that is not going to happen, they have testified. So for both counts, the stabilizer would not go into effect, and even if in the 1985 period, 1984-85 period, it got a little bit below 15 percent, down to 14 percent, because funds coming in it would get back up to 15 percent. So it is not going to trigger.

So if it is not going to trigger, and the administration admits it now, then we ought not to—we ought not to put fear in people's minds that the whole social security trust fund might become imbalanced or require additional taxes because we don't think that that is going to happen.

Now we have people all the time who can always look with great gloom about what is going to happen with the social security program. I noticed yesterday, Senator Heinz, that an organization called the CED—what is the CED?

Senator **Heinz**. Committee on Economic Development.

Congressman **Pickle**. Committee on Economic Development. I don't know who those gentlemen are, but I suspect they are a conservative moss-backed, highly financed group of people who are against any kind of form of social security except perhaps as a State insurance program——

Senator HEINZ. Easy. My father was a member of that. [Laughter.]

Congressman PICKLE. Well, he is not around now, though.

Senator HEINZ. He is very much around.

Congressman PICKLE. It is a group, in my opinion, that are mostly fearful that we haven't made enough changes and perhaps you could say that about any program. Namely, that if the economy takes a big tailspin, that the social security trust fund would get into great difficulty.

Well, if we had a Great Depression, social security and everything else is going to get in great difficulty, but as far as we can with our stabilizer, we have got a balance on that social security trust fund and I would put to rest your fear that the social security trust fund is going to go broke because we didn't do enough.

We did as much as we could last year and we think we have done the right thing. But now that is not a part of this hearing. I just want to say to you that the costs that the administration has been publicly advancing as a reason why they can't support it in my judgment are not valid, and that our figures are accurate.

We got our statement from the CBO and from SSA actuaries. We have also gone to the administration, the SSA, and said to them, would you agree with the medical improvement? And we thought we had a general agreement that they were all in support, but all at once now they didn't reckon with Mr. Stockman and OMB.

So we have a problem and we must try to advance legislation, and whether it is this exact bill or whether it is some other measure, it is something I hope that Congress can come to grips with and that we can do it soon, because your testimony tells me, based, Commissioner, on what you said and what Governor White has said, we have got 60 days to take action to correct this problem.

Now, I have delivered myself of my statement. Mr. Frost?

Congressman FROST. If I could just make one comment. I think that the legislation is very important. It should be passed. I do think there is a real possibility that the impasse involving industrial development bonds will not be resolved in the next few months, and I would hope that the Ways and Means Committee will separate out the disability section of H.R. 4170 and not keep it as a package, because I would hate to see this very important—these very important provisions—fail to be enacted because of the continuing impasse over IDB's. Congressman Pickle has indicated there is a possibility it would be broken out as a separate bill and I would certainly hope that that could happen, that Ways and Means would seriously consider proceeding with the disability sections as a separate piece of legislation.

Congressman PICKLE. Well, that question would be left to the chairman of the Ways and Means Committee, but I am indicating to you my hopes that if there is any reason the tax bill is going to be delayed, that we would be able to proceed with the disability bill separately.

Congressman FROST. Those of us who have problems with the IDB section of the tax bill do not necessarily have problems with the disability section. I personally do not. Even though I have questions on IDB's, I certainly am a strong supporter of what Congressman Pickle is trying to achieve in the disability area.

Senator HEINZ. Mr. Chairman, I have one last question, if I may.

Congressman PICKLE. Yes, Senator Heinz.

Senator HEINZ. Mr. Chairman, I would like to ask our panel from the State rehabilitation commission to make a comment on the following comment I received yesterday from Mark Hudson, who is one of the State supervisors in Indiana, in the disability determination service. He was testifying representing the Great Lakes region of NADE, from whose president we will be hearing later. After we had heard about the problems and the way SSA told the examiners to do their job, I said to him, "What you are saying is that you were asked to make what you believed to be wrong decisions day in and day out, knowing they are wrong, and you were nonetheless going along and making those wrong decisions because you have to." I said, is that right, and he said, "Yes. That is right."

Are you being asked to make decisions that you know are wrong by SSA?

Mr. ARRELL. We are being asked to make decisions that I think unfair. I don't think they are wrong from the standpoint of what the policy and law——

Senator HEINZ. Call them unfair, call them wrong. I would call an unfair decision wrong, but that is my taste.

Mr. ARRELL. I think there has been a tremendous injustice placed on some of our disabled citizens in this State and across the Nation because of this——

Senator HEINZ. So you are being asked to make decisions that are unfair?

Mr. ARRELL. Absolutely.

Senator HEINZ. And you know they are unfair and you still have to make them?

Mr. ARRELL. Absolutely. I have testified before that on several occasions and I will do it again.

Senator HEINZ. Mr. Chairman, I just want to amplify one thing you said. You talked a few minutes ago about the cost of legislation and how the administration has a much higher estimate than the estimate you have received from the Congressional Budget Office on your bill.

Two points. No. 1, if the administration thinks that your bill is costly, they are going to find out what cost really is if and when one of these cases gets to the Supreme Court. A Supreme Court decision is going to cost far more money if they are allowed to settle this issue than even the most excessive estimate of your bill, which happened to be a wrong estimate. I agree with you.

The worst thing you want to do is let the Supreme Court in all its infinite wisdom decide what Congress might have meant back in 1954, 1965, or 1980. The rule of thumb there is that they make decisions that are always expensive.

The second thing that people should know, in addition to the fact that the stabilizer is not going to be triggered, is that the disability insurance trust fund has been, is, and is expected to be the most solvent of all trust funds. It is so solvent that by the year 1996 it will have a surplus of $50 billion and will be taking in in revenue twice as much as it is paying out. And it builds up to that more and more each year.

So in the next 12 years, each and every one of those 12 years, the surplus in that fund will steadily, even dramatically, build. And that is a trust fund that the people we have heard from today have been paying into all their working lives.

Mr. Chairman, I thank you very much for this opportunity.

Congressman PICKLE. Well, Senator, I am glad you made those observations and I certainly agree with you with respect to the costs. What is going to happen is alternatively worse than the cost. But when you consider the fact this bill might cost $1.4 billion, and that is only because we are just doing what is right, that is going to be stretching out over the next 3 to 4 years and the trust funds are able to handle it and though we are part of the unified budget, we are not having to raise taxes to do it. We are just doing what is fair.

Well, I thank you gentlemen very much, and I appreciate your coming here and testifying. Let me say to the audience now, we have one other panel and they may be a bit uneasy out in the audience hearing all these things, but we didn't put you last to make you uncomfortable. But we do want to hear from some of the examiners on the State level.

And I am going to ask Reyes Gonzales, who represents the National Association of Disability Examiners, if he will come forward. And I believe Caroline Blackburn, director of the Dallas County Department of Human Services is here.

Now Mr. Gould, Warren Gould. You are an attorney representing whom?

Mr. GOULD. Well, I have done 52 of these cases over the past 4 years and I was at an administrative law judge hearing on Wednesday and the judge called me and said, "Warren, you really need to go down and talk to Congressman Pickle and Senator Heinz," and I have talked to Senator Heinz' staff, and they said, yes, come on by. So here I am.

Congressman PICKLE. All right. We are glad to have you and if you will just have a seat. I am going to ask Reyes Gonzales if you are the president of the national association or are you president of the State association?

Mr. GONZALES. I am president of the national association.

Congressman PICKLE. National association. Well, we are certainly honored to have you here today.

Would you help him by pulling that cord up a bit?

Fine. Please proceed, Mr. Gonzales.

STATEMENT REYES GONZALES, ELGIN, TEX., PRESIDENT, NATIONAL ASSOCIATION OF DISABILITY EXAMINERS

Mr. GONZALES. Thank you, Mr. Pickle, Senator Heinz, and Congressman Frost.

I would like to ask you to make my prepared statement a part of the record. If I could, please, I would like to read some excerpts from my statement and then I will be willing to answer any questions.

Congressman PICKLE. All right, Mr. Gonzales. We will have your prepared statement made a part of the record and you may proceed, then.

[The prepared statement of Mr. Gonzales follows:]

PREPARED STATEMENT OF REYES GONZALES

On behalf of the National Association of Disability Examiners (NADE), I welcome the opportunity to express our association's views on the social security disability program. I am the current president of NADE, which has membership of approximately 2,000 individuals engaged in a wide variety of functions within the disability program. NADE is a professional association open to all persons involved in the evaluation of claims for disability benefits, in the public and private sector. The majority of our membership is in the State disability determination service who are adjudicating the disability claims for the Social Security Administration. Other members include attorneys, physicians, psychologists, and others involved in all aspects of disability evaluation. Our membership shares the public awareness to the problems existing in the implementation of the Social Security Administration disability insurance and supplemental income programs.

Since the inception of Public Law 96-265, also known as the 1980 Disability Amendments, there has been considerable outcry from the public due to the accelerated process by which the claims were being reviewed and by the high percentage of terminations that were being processed. After the accelerated continuing disability reviews (ACDR) were instituted in 1980, State agency termination rates ranged from 40 to 65 percent, some higher in some months. This was an alarming rate since the GAO study prior to 1980 gave an indication that approximately 20 percent or one out of every five individuals who were on disability did not belong on the disability rolls. After 1980, State agencies however were terminating benefits approximately at the rate of one out of every two (or about 50 percent).

After 1980, we found that administrative law judges were reversing these State agency terminations almost to the tune of 50 percent. 1981 and 1982 were very hard years on the staff of the disability determination units since they were receiving a majority of the adverse publicity for the high termination rates produced by the accelerated and periodic reviews and for the high reversal rates produced by the administrative law judges of these terminations.

I was proud to see that legislative action in the form of investigations, hearings, and congressional action brought about some relief to the beneficiaries who were unduly sufferng from a bureaucratic nightmare as a result of administration of the 1980 amendments. One important relief came when Congress passed Public Law 97-455 in January 1983. This law give relief in the form of the following to the disability program:

(1) Temporarily provided for continuation of benefits through the administrative law judge (ALJ) hearing for those individuals terminated and appealing their cases.

(2) Provided that an individual should be granted the opportunity for a face-to-face evidentiary hearing, during reconsideration of any decision that disability has ceased. Initially, these hearing officer positions were to be Federal positions, but in October 1983, the Secretary of Health and Human Services (HHS), Margaret Heckler, gave the States the option to hire State personnel to conduct the hearings beginning in January 1984. It is my understanding that all but three of the States have opted to perform this function. In those States that have not opted to perform this function, Federal hearing officers will perform the duty.

Although this congressional action did provide some immediate relief to the beneficiaries then, it is still quite obvious that SSA and Congress need to take further action to insure that the disability program being administered to the public is consistent in reference to policy interpretation and is being applied in the most humane manner possible.

In December 1982, a Federal court in the State of Minnesota ruled against SSA because the administration was not applying the sequential evaluation process, instituted for the determination of disability claims, in cases dealing with the mentally impaired. Prior to this action, disability examiners throughout the country were disturbed by the policy issued by SSA that permitted individuals to be denied disability benefits if they did not meet or equal the Social Security disability guidelines for disability without addressing residual work ability. We communicated with John A. Svahn, then Commissioner of Social Security, supporting the alteration of SSA's adjudication process for claims in which mental impairments existed. NADE believes in the application of medical and vocational factors in the evaluation of mental cases as it does in the evaluation of all impairments.

In light of the actions that have taken place nationally, NADE supports even further refinement of the disability program.

We are aware that Secretary of HHS, Margaret Heckler, issued some major directives in the summer of 1983 in reference to the disability program. It was the administration's intent that some of those directives would improve some of the problems that currently existed with the disability program. We feel, however, that further congressional action is necessary.

NADE sent some position statements to the Senate Finance Committee and to the full Senate in November 1983, stating that because of the adjudicative climate (outlined earlier in this testimony), we supported the need for a legislative definition of medical improvement. We also support the SSA directive that returns the face-to-face evidentiary hearings to the State disability examiners. Finally, we also urge that the provision calling for equal numbers reviews of both favorable and unfavorable decisions be reinstated in the legislation.

NADE believes that a clear "medical improvement" standard needs to be established. One that creates a category of beneficiaries who because of their medical conditions have not improved, are presumed to be unable to work, and therefore must continue to receive benefits.

NADE believes that medical improvement needs to take into consideration improvement in medical or vocational technologies made available to the beneficiary; error on the face of the evidence of the originally allowed determination; return to work (SGA); and evidence indicating the impairment is less severe than originally proposed. In addition, NADE has two proposals which would benefit some of our elder beneficiaries who have become acclimated to living the life of a disabled and who would have difficulty obtaining work in our real world of work. Those are:

(1) Beneficiaries, aged 55 years and older, who have been on the disability rolls for 5 years or longer, should be continued, unless there is specific evidence of medical improvement.

(2) Beneficiaries, aged 50 years and older, who have been on the disability rolls for 10 years or more and who have not demonstrated the ability to perform past work, should be continued.

These proposals consider the reliance many disabled persons have come to place on the disability benefits they receive, as well as the adverse effect longevity on the rolls plays in a person's successful return to the work force. All of the aforementioned would provide equity in evaluation and less harshness than the present system, but maintain the integrity and purpose of the disability insurance program.

At the present time, some States are recommending cessations only if medical improvement is shown, while other States are not considering medical improvement. A single definition for medical improvement for all States would increase uniformity in the disability program.

Currently SSA, upon the direction of Secretary Heckler in the summer of 1983, is reviewing policies and procedures under which we are adjudicating disability claims. A review of the mental disorders and the listing of impairments is also being undertaken and input is being sought from the American Psychiatric Association and other professionals in the medical field on this subject. NADE supports a moratorium of all CDR's (not just mental cases as some have proposed), until SSA completes its review of all its policies and procedures, issues national implementation dates for these current procedures with training and until the issue of medical improvement is clarified. We support that such a moratorium be effectuated immediately and continued until such time as SSA or Congress provides a single definition of medical improvement to be used, uniformly so that all disabled people will be treated equally, regardless of State of residence. This would also come at the time that the program needs it the most, in that we would be receiving the top-to-bottom policy clarification hopefully, sometime in 1984 from SSA. NADE has gone on record with this position and sent a letter in November 1983 to Patricia Owens, Acting Associate Commissioner for Disability for SSA, regarding this position.

Public Law 97-455 legislated that by January 1, 1984, individuals whose benefits are terminated due to a medical review (CDR) must be given the opportunity to have a face-to-face evidentiary hearing at the reconsideration level conducted either by the Secretary or the State agency. We support the decision of the Secretary of HHS to encourage that these particular face-to-face evidentiary hearings of CDR claims be conducted by State agency personnel. NADE feels that the disability examiner in the States have the expertise and knowledge of the disability adjudication process to conduct face-to-face evidentiary hearings that will be needed. If the evidentiary face-to-face hearings prove successful, NADE supports consideration of face-to-face interviews of all initial level denials of all claims. Perhaps, a demonstration project would be the most economical choice to take so that the project could be evaluated prior to a decision to do face-to-face hearings of all claims.

Public Law 97-455 passed in Congress in December 1982, included a provision to allow beneficiaries, whose benefits have been ceased because of a medical review of their eligibility, to elect to continue to receive benefits until an ALJ has rendered a decision in the case. If the case was denied then the benefits, except for medicare, were subject to the hardship waiver standards already in law. This provision was adopted on a temporary basis until further consideration could be given to the CDI issue in the 98th Congress. Thus, under the present law, no extended payment could be made after June 1984, and the provision applied only to cessations occurring before October 1983. Subsequently, benefit continuation was rescheduled to end on December 7, 1983. Subsequent to this date, since no legislative action to continue benefits under this provision was passed by Congress in 1983, SSA made an administrative decision to continue benefits for individuals until congressional action relieved this situation. It is now time that Congress acts on this provision and continues benefits as originally indicated in Public Law 97-455 and originally passed in Congress in January 1983. This should not be on a temporary, but rather, ongoing basis.

The aforementioned position will go a long way in establishing more humane treatment in the disability program, establish uniformity in the application of the disability process and provide quick and immediate relief to the Nation's disability applicants and to the public in general, that is long overdue.

NADE wishes to testify that notice and comment provisions concerning issuance of regulation of section 553(c)(2) of the Administrative Procedure Act be applied to benefit programs in title II. However, we again want to strongly emphasize careful administration of it by SSA and the ALJ's. One of our major concerns has always been, as we have previously testified before Congress, the fact that policies and procedures for adjudicating disability claims have not been issued with the same consistency to the ALJ's and to disability examiners. Continued enforcement of SSA and the ALJ's application of this provision must be continued in order to insure more uniformity in the disability program.

NADE does not support the position that the Social Security Administration either apply the decisions of circuit courts of appeals to all beneficiaries residing within States within the circuit or appeal the decision to the Supreme Court. The Social Security Administration's current policy of nonacquiescence in the district and appeals court decisions would appear to be the only plausible stance under current operating precedures. Court decision can vary from district to district and it would not be reasonable for a national disability program to be governed by such regional decisions. As we noted in our June 8, 1983 testimony to the Senate Government Oversight Committee and in our testimony to the Senate Finance Committee on January 25, 1984, to require the Secretary to acquiesce or appeal individual court decisions would not promote uniformity in the decisionmaking process. If acquiescence is followed then even more appeals will result with the actual day-to-day functioning of the program being quagmired as case processing proceeded on an erratic basis awaiting the settlement of injunctions, stays, and decisions. NADE has long supported the establishment of a social security disability court. This would solve the problem of acquiescence and would lessen the congestion in appeals in the Federal courts. More importantly, it would create a single policy body for decisions, binding at all levels, and enforcing uniformity. If a legislative solution is sought to this complex problem, the establishment of a social security court offers a more effective alternative. Acquiescence should not be a major problem where there would be only one social security court—with a mechanism to insure internal consistency as is provided in the IRS Tax Court—and there would be appeal to only one circuit court and the Supreme Court. It is my understanding that the IRS acquiescence in circuit decisions for litigations purposes but not for policy purposes.

NADE supports the creation of a permanent advisory council consisting of medical, psychological, and vocational experts to provide the necessary advice and recommendations to the Secretary on disability standards, policies, and procedures. We also believe that a representative from NADE be included in this advisory council.

NADE wishes to testify to its support of ongoing medical and vocational training to all adjudicators involved in the disability process, DE, ALJ, hearing officer, etc. We should like to emphasize that training such as that the disability examiners receive, be mandated for potential and current ALJ's. Currently a new disability examiner hired by the State agencies undergoes 3 to 6 weeks of formalized medical training in disability evaluations using the SSA listing of impairments. We believe that this type of intensive medical training should be mandated for all potential and current ALJ's. Further, ongoing continuation of training in the form of medical and vocational training in reference to adjudication of social security disability claims and the application of the listing of impairments should be conducted for both the examiners and ALJ's. This training could also be provided at a central point throughout the regions of the country, where both the ALJ's and the disability examiners, for a given period of time, could receive the same formalized training for the adjudication of claims.

NADE is concerned about the beneficiaries who are no longer assured of equal treatment in various States. Clearly, we must take steps at whatever cost to insure that we have a uniform national administration of this program. We feel that with some administrative reform and legislative assistance the goals of a national program and savings could be accomplished.

H.R. 4170 and S. 476, recently introduced, addresses some major portions of the disability problems. These bills address the need for medical improvement, the need for a right for a personal appearance, the need for continued payment of disability benefits during an appeal, the need for uniform standards for disability determinations, the need of more consistency when evaluating pain, and mandatory appeal by the Secretary on certain court decisions. This tells me that it is very clear that congressional members have done a very detailed study into the problems affecting the disability program. Certainly it is time that we answer and address the needs that the constituents throughout the country are asking for. This has been verified by the fact that at some time or another approximately 28 States during the last 6 to 12 months have issued moratoriums on ceasing benefits or ceasing the review of claims until medical improvement is shown or until SSA revamps its policies and procedures. It also speaks very highly for the Congressmen in the House and in the Senate during 1983 who took the initiative to hold hearings and investigate the problems within the disability program and who have presented them before Congress in a formal manner. I applaud those Senators and House members who have so graciously testified during 1983 in reference to the much needed reforms of the disability program. Certainly we must support this significant movement on this subject.

Recently the Social Security Administration has gone on record indicating that the administration opposes any disability legislation this year. I am appalled at that position. Although they have reported that the initiatives they have directed, such as the top-to-bottom view of their policies and procedures and the evidentiary hearings for ceased beneficiaries will go a long way in correcting some of the ills in the disability program, I disagree that they will correct all of the ills. We must have congressional legislation to address these problems this year.

We certainly applaud their initiatives, but we feel that because there are 28 States that are processing cases under different standards, these initiatives are not only too late but not enough to deal with the problems in the program right now.

The Secretary had reported that SSA plans to withhold the option to do the face-to-face evidentiary hearings to those States that have Governor orders for a moratorium on cessations or who have issued executive orders to cease only if the beneficiary has shown medical improvement. It appears that with this decision, we do not have the public's best interest in mind. The Secretary has also offered as an alternative contracting out to the private sector the CDR workload in these States if they continue to impose the Governor ordered directives. NADE has long taken the position that the State personnel in the DDS are the best qualified individuals to perform the face-to-face evidentiary hearing function. If we contracted this section out, this would only create another sector of individuals with whom the public would have to deal with in the disability program. I also fail to see that these individuals have the social security disability program knowledge of processing cases considering medical and vocational factors.

Senator Russell Long, a member of the Senate Finance Committee, indicated that the Secretary should have fired the very first State that chose to process cases under different standards than what SSA had directed. We recommend that we use a more workable approach and that is to comply with the court order which says that it is illegal for SSA to process cessations without having shown medical improvement.

We would also like to testify to the concern of the high reversal rates occurring at the ALJ level. We support the position that if the disability examiner had more flexibility in the preparation of the residual function capacity (RFC) of the claimants/beneficiaries and had the flexibility to give more weight to pain and had the opportunity to obtain more information by observing the claimant and contacting the treated source, then there would be a higher rate of continuances/allowances at the DDS level than at the ALJ level. It is my understanding that all of the abovementioned situations were proven by the pilot tests of the evidentiary face-to-face hearing project. We also feel that there must be some assurances that the ALJ's are using the same policies and procedures to process claims that are being used in the DDS.

There has been some concern that the medical improvement standards will be very costly to the program. I can only answer that question with another question, "Aren't we losing more by the lawsuits in the courts and by the growing disenchantment by the public in our program?"

Although many problems exist, the disability examiner remains dedicated to the profession and to improve upon it. This can be seen in participation in training programs beyond those the State and Federal governments provide and in interest in furthering change in the laws under which decisions are made. Disability examiners, although frustrated with the program from time to time, have not given up on it or the desire for an equitable decision for every disability applicant and beneficiary. We support whatever efforts are necessary to make the disability insurance program a sound and equitable program for the disabled. Professional disability examiners accept these challenges and the changes they bring to the program. NADE has made its recommendations to assist the examiners by underlying the need for uniformity and consistency throughout the process. We hope consideration will be given to our proposals for changing some of the problem areas. Much has been stated lately for the humane nature of the reforms. We applaud this attitude on the part of the administration. NADE believes that both the new applicant and the current beneficiary deserve humane treatment. They also deserve an explanation of the disability process and how it affects them. Without this knowledge and an awareness that the program can be modified, there will be little public acceptance. We support whatever efforts are necessary to make the disability insurance program a sound and equitable program for the disabled.

This concludes our statement for the record.

Congressman **Pickle**. We thank you, Mr. Gonzales, and I will state again, we appreciate your condensation of your statement, but all of it will be a part of the record.

Now I am going to ask Caroline Blackburn, who represents the Dallas County Department of Human Services, to proceed.

STATEMENT OF CAROLINE BLACKBURN, DIRECTOR, DALLAS COUNTY, TEX., DEPARTMENT OF HUMAN SERVICES

Ms. **Blackburn**. Thank you. Let me explain to you why I think I am here and what we do and why our—the information that I hope is of some value that we have that we brought today.

I was contacted on Monday to prepare——

Congressman **Pickle**. We are going to have to ask you again to please get the microphone up closer to both of you. Just right up into your mouth, if you will.

Ms. **Blackburn**. I was asked on Monday to prepare some information regarding the impact of the changes in social security disability as far as the terminations of some people receiving disability benefits on local general assistance programs, and that is what I am prepared to do today.

I do not have a written statement for you. I will give you some information about what that has meant to our department and what that has cost us in terms of dollars, to the best of my knowledge. We did not begin at the beginning and keep track of exactly what the impact was on our program. We have traditionally assisted people who—and our role is to help people who are disabled, cannot work and are not receiving benefits from some other types of programs. So that is our mission.

We have a small program, spend between $600,000 and $700,000 a year in general assistance payments: rent, food, utilities, and so forth.

The impact we began measuring sometime in 1982. We have statistics from the last 5 months of 1982 and for 11 months of 1983, to see which of our caseloads were in fact in the appeals process of social security disability and SSI. We did not break out, however, those people who were terminated from social security as opposed to those people who were appealing their original application. We have lumped those together and I can give you those figures.

It is important for you to understand, however, that when we count these statistics, they are people who we have medical information on and consider to be totally disabled and consider that they would meet the requirements of social security, so that we have not used some people who would be temporarily disabled or others to inflate these figures.

Our experience has shown that approximately 10 percent of the people that we served during that time period were in fact eligible for social security disability benefits. They were either in the appeals process, had been denied on the application, or had been denied in the review process.

Ultimately, most of those people, and I do not have the exact figures, were in fact enrolled into the social security system so that eventually that information was verified by the fact that they did finally receive benefits.

We noticed there were two or three problems for us in dealing with these people, and you have mentioned in your discussing of legislation today, you have mentioned some of the things that we are in fact concerned about.

One is the indefiniteness of this system itself. We don't know where people are in this system any more than they know. We don't know whether they are going to be in the hearing process for 1 month, 8 months, 1½ years, or what. We just don't know. You cannot find that information out.

It is very difficult to deal with the system and find out where people are. And that has an impact, certainly, on their lives and on our programs. I think that one of the major problems that we identified—and this was more on appeal of original applications, but it occurred at the same time that there were the disability reviews, is the bogging down of the system before the administrative law judges.

People would in fact have hearings and then it would be many, many months—in one case as many as 7 months—before the decision was rendered. So that even though the person went through all the hearing process, we had to wait 7 months to have a final determination.

Congressman PICKLE. Seven months from the time they had the initial hearing to reach the ALJ level?

Ms. BLACKBURN. No; the final hearing. It was 7 months between the final hearing and the decision being——

Congressman PICKLE. On the ALJ level to the time the decision was rendered?

Ms. BLACKBURN. That is correct. So that in that period there is not anything you can do. The hearing process has already been completed, so you cannot submit any new information. You really are very helpless in that process.

Finally, I would like to say that—let me just give you the information on cost. As I said, approximately 10 percent of our caseload was in fact in this process of appeals. That is a fairly small amount of money, the impact. We look at approximately $90 to $100 a month going to those persons because of our rates of assistance and we are talking in the neighborhood of $60,000 a year.

That is not a large amount, and certainly Dallas County is prepared to spend that money and would continue to offer that service to people who are in the process.

Finally, I would like to say that—in just a subjective opinion about who this hurts the most in all this process, and so forth—it is clearly the mentally ill. And that is the area that we—those people are less capable of negotiating the system of going to Texas Rehabilitation Commission, and social security, and hearings, and seeking out attorneys, and getting good medical information, and going from one doctor to another. They are certainly less prepared to do that than are other persons, and to understand that process even.

So we, in fact, may help them through that. And that is difficult for us to find out where to go and what you do, and where you are in the process. So what I would say as far as the agencies in this community that attempt to fill in, the system itself is just difficult to understand and we are doing the best we can. Any clarification on the part of the State agencies or on the part of Social Security Administration to help us understand what is going on when we are in fact reacting to this process would be helpful. But the information is different from different people on the staff and it is a difficult situation.

I hope this information is helpful to you. If you have questions, I will certainly be glad to answer them.

Congressman PICKLE. Well, I thank you. Inasmuch as we have the two panels and we are not going to—we will come back to Mr. Gould. I would ask either Senator Heinz or Mr. Frost if you have a question of either Mr. Gonzales or Ms. Blackburn? Congressman Frost.

Congressman FROST. I do, to Ms. Blackburn. The program that you administer is a little different than programs that perhaps Senator Heinz would be familiar with in his State. And this is basically an emergency program that you administer; it is geared to short-term assistance as I understand it.

Ms. BLACKBURN. That is correct.

Congressman FROST. It is not an ongoing welfare-type program that the State of Texas would have. It is not comparable to a lot of other programs; it is kind of a bridge or a gap—to fill a gap—as I understand your program. What is the average amount of time that someone would be receiving assistance from this program in Dallas County?

Ms. BLACKBURN. Well, there is really not an average. We have some people as short a time as 2 weeks; we have other people for as long as 3 years. It depends on the circumstances. For the Senator, it is—in Texas the general assistance—county operated general assistance programs are not connected with the State welfare programs; they are in other States connected. But the tax base is the same; that is, local tax funds being used for general assistance. The difference in Texas is that the two departments are not together, they are separate. So we work very closely with the State human resources department.

Congressman FROST. But as I understand your program, it is primarily focused on fairly short-term assistance trying to get someone to answer a person while they may be in between——

Ms. BLACKBURN. That is exactly right.

Congressman FROST. Or while they may be applying for another program. It is not designed to be long term.

Ms. BLACKBURN. That is exactly right.

Congressman PICKLE. I am glad you made that distinction Mr. Gonzales, in general, does the NADE organization indorse the pending legislation, either the Pickle bill or the Heinz-Cohen-Levin bill?

Mr. GONZALES. Yes.

Congressman PICKLE. Do you have any disagreement in any one section in particular?

Mr. GONZALES. The only one section that we have disagreement with is that we do support the Secretary's current policy of nonacquiescence. And if you would like for me—I would like to just expand on why——

Congressman PICKLE. Yes; if you would, I would like to hear it.

Mr. GONZALES. I understand that position is different from your bill. We feel that if the Secretary is required to acquiesce in a particular circuit, there is a possibility that we would have certain circuits in certain States being affected under that circuit processing cases different than in another circuit. As I understand it, the current legislation addresses acquiescence for all States in that particular circuit court decision.

Our alternative is a social security court along the lines of maybe what the IRS court currently uses. That is an alternative; that is the only plausible one we can come up with now.

Other than that, we support the Secretary's current policy of nonacquiescence until we can come up with a better solution.

Congressman PICKLE. In the last two sessions of Congress, I have introduced legislation advocating the creation of a social security court. It is very controversial both among the attorneys and the administration and, of course, the omnipresent OMB.

I don't know that we will be able to advance it and there is a good argument for it because that question is in controversy among the lawyers to a very major extent. It may be an alternative to our recommendation of acquiescence now, but it is not likely that that bill is going to pass.

I hope we can have some hearings and give consideration to it so it can be really examined. But in the absence of that legislation, then we have to decide, well, how do you have some kind of acquiescence on a national basis. If we could get a law passed to say that a decision in one circuit court is the law for the Nation, that would be fine. But we can't process it, except probably through due process; which means that it is likely that if we make the law applicable in one circuit, that question will be immediately appealed to the Supreme Court for a decision, whether it be applicable for the whole Nation or not.

Mr. GONZALES. Other than that one issue, yes, we agree with about 95 percent of the remainder of the bill. I do want to caution, though, to that particular section—because Senator Heinz can agree with me—that at the Senate Finance hearings on January 25, that particular section really disturbed Senator Long.

In fact, his statement was that it in itself would break the program. So I thought that it should be something that ought to be at least discussed further.

Congressman PICKLE. You just raised a factor.

Senator HEINZ. We wish you Democrats would stick together.

Congressman PICKLE. Well, it is hard to know how to handle Senator Long.

Senator HEINZ. We occasionally wish the same thing of Republicans, I might add.

Congressman PICKLE. Mr. Gould, would you now like to proceed and make such comments and statements you have made? I think we have time for that and we would be pleased to hear from you.

STATEMENT OF WARREN GOULD, ESQ., FORT WORTH, TEX.

Mr. GOULD. Thank you, Congressman Pickle, Senator Heinz, Congressman Frost. I am a practicing attorney. Social security work only comprises about 3 percent of our firm's practice. I got into this 4 years ago because I had a client who had a problem. I could not figure out anybody to handle a social security case, so I took it.

Well, one leads to another, leads to another. I am beginning to realize what a mess this is. I do not understand why everybody here agrees that it is a mess, except the administration, which is not here. That is maddening to me personally.

I agree with the comments that I have heard. The problem here——

Congressman PICKLE. Let me interrupt you. Is there anyone in the room here who represents the administration, who could speak for the administration, or would be willing to put a statement in the record for the administration?

Senator HEINZ. Would you also ask if there is anyone in the room who has invited them?

Congressman PICKLE. Yes; we invited them. And I said earlier that I am afraid that they are using their cost estimates as a means of opposing a bill and they do not want to hear anything else. I hope we can change that situation. Now, Mr. Gould, you go ahead.

Mr. GOULD. It is an impossible situation. These people that come to see me are, to a large extent, illiterate; they will have a third-grade education, a fifth-grade education. They depended on the Government and now the Government says, "Hey, that is it; you are not disabled."

They will come in in wheelchairs, on crutches. Some people will have worked 35 years at the same job. These people are not people who simply are out to get something that they are not entitled to.

I do not know anybody who can live on $436 a month. Most of these people have had jobs that will make $800, $1,000, $1,200 a month, yet they finally become disabled, through no fault of their own, and they cannot get help even though they paid for it through the disability insurance program.

I do both termination cases and disability cases. I have had the administrative law judges—and thank God we have them—stop in the middle of hearings and say, "I do not understand why this case is up here. This case should never have reached this level." And the judge will say, "I find your client disabled; thank you very much." I have got a case—I brought a stack of cases; I know you do not want to go through them—but in one of them—and I talked to my client last night and asked if I could use his name; and he said, "No, I am scared to death of the administration. I do not want them to know who I am." He said, "You can use the facts out of the case."

It is much like Mr. Weisbrod's client. The doctor that the Social Security Administration sent him to said that this man is clearly disabled. The disability people who help these people get jobs when they are disabled say his case is too severe; we closed his case; we cannot help this person.

At the hearing on my client's case, the administrative law judge, after about 3 minutes says, "What are you doing here? You are obviously disabled." He wrote a 10-page opinion. Nobody paid any attention to it, but it was a nice opinion. He is disabled.

Here is a case that is coming up right now—and I talked to my client's mother. This is Robert Brennan. This is Mr. Brennan's bottom; that is what is left of it after he had an accident. The administration says, in its denial of determination, it says, "You can sit, walk, lift, and stand without significant restrictions." This man does not have a bottom; he has got a colostomy. He has been in bed for 5½ months in the hospital.

The disability determination division says, "Well, you are going to be better in 12 months." I have got three doctors' letters from all of his treating physicians—Tarrant County Hospital District.

My client does not have any money. He is the county's problem. He was in a full body cast. He has a full cast on his left leg.

> He, orthopedically speaking, should be off work as a truck driver for at least the next 12 to 15 months and that should qualify him for whatever benefits and aid he might require for that period of time.

That is Dr. Owen Dewitt, one of Mr. Brennan's treating physicians.

Another treating physician says:

> Our estimate at this time would be—include anywhere from 12 to 14 months. He has been hospitalized since September 30 of 1983. Soft tissue injury requires at least three to four more operative procedures and a number of further hospital admissions in the next 4 to 6 months; at least 16 to 18 months disability.

This guy cannot even get out of bed and the administration says he can sit, stand, walk, carry, lift. You got me. I do not know who reads these things. It is unbelievable.

Another of my clients, Brad Burris, he is starving to death. He has borrowed $16,000 from his family. This case is on appeal to the Federal district court. It has been on appeal for 1½ years. He cannot eat. Any money he gets is strictly from charity.

I have done 52 cases. I do not have any idea—I have won four times as many as I have lost. There is no reason for my clients to have to pay a lawyer to do this. The money comes out of their pocket. I cannot afford to do it, you know, for nothing; but I do not understand why I am having to litigate these cases which are obvious on their face.

I know why I am having to do them at this point, it is because the clients do not know how to present their cases. You have got to lay it out for the administrative law judge. My firm developed a 7-page form that we send to the doctors. We say, "How much can this man stand; less than two hours?" Doctors do not like to fill out questionnaires.

We try to give the physicians places to fill in the blanks and make checks. I then give the forms to the administrative law judge.

I would be happy to answer any questions. Face-to-face interviews aren't going to work, I do not think, unless we get people who are qualified to listen to face-to-face.

Another of my clients, Steve—I will not use his last name—I got the face to face in his case; it is one of those where the administrative law judge stopped in the middle of the hearing and found my client disabled. Somebody from the administration sits there on a face to face and asks the claimant questions and fills in the blanks. Here we go—

> Question: Is witness (including claimant), who have testified as follows (name and brief description of testimony, including credibility).

Can you imagine a clerk sitting up there judging credibility from a fellow who has been disabled for 12 years. Well, does he sit and squirm; is he hurting? The answer here is: I am disabled due to weakness and fatigue. This is your face to face. This happened in Dallas. Here is the evaluation of the evidence. The claimant is not working and he does not meet or equal a medical listing; however, he certainly has a severe impairment. He has a marked, generalized muscle atrophy, OK. She, the clerk, is looking at the claimant as she fills out the form. Well, he looks pretty skinny to me—which substantiates the allegation of weakness and easy fatigueability.

"His vision has improved with the last laser treatment." That is how I got him—an opthomologist who was working on his detached retina sent him, "And he can walk, though with discomfort. He does not have a moderate motor deficit as a result of his diabetic neuropathy. It is concluded that the claimant cannot do light work, but can do sedentary work." That is all they have to say; they cannot find you a job. You can just do sedentary work. "Therefore, the claim must be evaluated within the framework of vocational bill 201.2–25, which would mean that the claimant is not disabled."

The judge looked at that—the administrative law judge—and threw it out, reversed it. Somebody has got to help these people. I have been trying, you know. The administrative law judges do a good job. They are under a lot of pressure. I read that the administration says, "You people are reversing too many cases and if you do not stop it, we are going to put you on administrative leave." These disability claimants paid for the insurance; they are entitled to it. Everybody knows somebody who is drawing disability that is not entitled to it. I have never tracked one of those people down. Everybody I see is not only entitled to it, but should have never gone through these types of processes to get it.

I can go on for hours, but your staff said 3 to 5 minutes; so there it is.

Congressman PICKLE. Well, Mr. Gould, I thank you. I think it is commendable of you to come here as an attorney and be forthright as you have, not only about the rights of the claimants, but that the system is not working and it is misunderstood by both the claimants and the participants and the administration.

I have to say that we must agree largely to what you are saying. We do have problems and we have to find some way to administer the program. And we cannot just take somebody's word, it has got to be proven or substantiated. And how we are doing it now is so that it can be improved.

I don't know that face to face will work, as you said. But it will not work unless we have qualified men at the State and/or the Federal level.

The question that we are trying to ask ourselves mainly now is, should we use the State personnel, State people, State-trained people with respect to the face to face, or would we go the Federal route and use those people who are attached to the Federal payroll as the face-to-face examiners?

We think probably it would be better to have the State because they are there, they know them, they are close, and they know the system—the State people; and we are recommending that.

But whether you go State or Federal, you are exactly right, face to face will not work unless we really have top-quality people making those examinations.

Mr. GOULD. Who are independent.

Congressman PICKLE. Who are independent; we have to agree with that. Now, you can say, well, it will not work. But it will work if we have those good people; at least it can be an improvement.

I do not say that everything we have been doing in the disability program is wrong; not at all. And I would like to be certain that everybody understands from this man's viewpoint. I think it is important that we review people who have been placed on disability. And whether it—if 3 years is too short a time, or whether it should be 4 or 5—but periodically there ought to be a review to see, is that person still disabled? We owe that to those people who are really disabled to be certain they continue to have their funds and not keep on the rolls somebody who is able to work and could work. Disability does not mean that you cannot work; you can do a lot of other things. But that does not mean you can do everything; you certainly will be limited.

Now in the reviews that we have had the last 3 years, a great deal of good has been done. We know that thousands of people have been removed from the rolls who probably should not have been on there. They did not appeal and they did not protest. And I do not think it is just because, as one lady testified, we did not think it was worth it.

I think a lot of people said, well, I can go work. We have had people come and tell us that and testify. So some good has been accomplished by these reviews. Some good can continue to be made by these reviews. But we ought not to do them so harshly and so abruptly that we do not know what we did.

We started these reviews—the SSA did—fully 9 months ahead of the time that we had set out by statute to start it. We went from

125,000 cases, roughly, a year, to 500,000, without qualified people and without really having an interpretation made.

And, of course, we are going to have great unfairness and horror stories and that is what has happened. Now we ought to admit to ourselves that we can do it better. We ought to have these criteria, such as the face to face, the medical improvement, the administrative law judge, the court decisions, the uniform standards; that is what we are trying to do.

And I am hoping that we can move it forward. We are all mindful—those of us who are concerned with legislation—that we need to act. And the point that you are making and that Ms. Blackburn and Mr. Gonzales have made ought to be taken and we ought to accomplish it. And I believe we will get one through the House by this spring—early. And I am sure that the Senate then can respond and that you will get it through over there and——

Senator **Heinz**. You can depend on me, Mr. Chairman.

Congressman **Pickle**. I certainly know that because no one has been more outspoken and more aggressive in molding their recommendation, Senator Heinz, than you have. I personally appreciate the leadership you have given over on the other side, and we are so honored to have you here today.

Let me ask now, in conclusion, if either Congressman Frost or Senator Heinz has additional statements or positions you want to make.

Senator Heinz?

Senator **Heinz**. I have one or two questions that I will be brief about, if I may, Mr. Chairman.

Congressman **Pickle**. Yes; surely.

Senator **Heinz**. One of the concerns that Mr. Stockman and the administration have voiced to Congressman Pickle and others of us is, again, this problem of leaving people on the rolls, who in fact, can work.

Now we have had all kinds of testimony that we are taking people off the rolls who cannot possibly work, and that is a fact. But some people say that, notwithstanding what we have heard today, the medical improvement standard—even with the four specific qualifications that you spelled out in your statement, Mr. Gonzales—may still be too broad. They say there ought to be one more exception, which is that if the beneficiary is found capable of performing in his previous job, SSA can at that point terminate the beneficiary without the demonstration of medical improvement.

Would that be a good or bad provision, a fair or unfair one; and why?

Mr. **Gonzales**. In my opinion, I think it would be a fair one. Our current program does have safeguards right now for individuals that have proven that they can work in the work force. If they work under 3 months, we have the option to consider—or not consider—that substantial work. If they work 3 to 6 months, we also have the option to really look at that timeframe to see if there were any situations that maybe were different or maybe applied different to this individual. Were they given special consideration, for example? And even if they have gone beyond 6 months, we still have the option to really see if there were unusual circumstances indicating that this period of work was substantial or not.

So we document a trail here. We even have a provision we call an extended period of eligibility. This is for individuals who have worked more than 9 months and are receiving disability. We still track them. We look at this work to see if this is reasonable employment.

We have those safeguards now. We can apply those safeguards to these kinds of situations. And I believe that if an individual has proven that he or she has stayed on a job for more than a year or so, yes, I think it is fair.

Senator HEINZ. All right——

Congressman PICKLE. Senator Heinz, let me interrupt. We hope that in the legislative opinion that we have adequately covered the considerations of the previous work. It is a difficult question and has been bothersome to both us and the administration.

For your information I want to say this: We have talked to them and we have worked with them on language, both in the legislation—the four conditions—and in the language of the report to be certain that they are satisfied. As of last month—that is December—the HHS and SSA had agreed that this is workable. Now, it may become a question because of other considerations, but we had hoped that had settled it.

Senator HEINZ. Well, as you and I know, HHS had been negotiating with the House and the Senate and then they broke it off about 3 months ago, much to our great disappointment. Mr. Gonzales, you have in effect testified that you would like to see the SSR's, the social security rulings, subject to the Administrative Procedures Act as the regulations of social security now are.

Do you see any problems with that? The reason I ask that is that the administration's position is that its SSR's are very complex; they are frequently changed. They say that they do it only to clarify these very complex rulings; that the Internal Revenue works that way.

In any event, these are never really substantive changes that they are making. They really do not affect anybody so why should anyone worry about it. It would be time consuming, cumbersome, and totally unnecessary without any redeeming merit for there to be a more formal rule setting procedure.

What do you have to say to that?

Mr. GONZALES. The one thing that I would like to say to that is that our intent in that particular paragraph is to insure that the ALJ's and the examiners are given the same interpretation for a ruling or the same interpretation for a policy. At the same time, a little further on, I even recommend some formalized training sessions. The problem is when you separate one and the other is that you are going to have these kinds of high reversal by ALJ's.

Senator HEINZ. So that I am clear, do you or do you not favor, as an organization, making these rulings subject to the Administrative Procedures Act?

Mr. GONZALES. Our organization has gone on record saying that we do favor it.

Senator HEINZ. Now, do you agree with the administration that that is really unnecessary because the changes made through these rulings are totally nonsubstantive?

Mr. **Gonzales**. I do not agree totally with that and let me give you an example of why. Every now and then we will have a very borderline situation. We would have the opportunity to go back and look at maybe an interpretation. We can pull and quote that rather than just use our own judgment. So I would say it is more of an aid to have it; yes.

Senator **Heinz**. If you say it is only an aid, it does not sound like is too important to you. Is what your organization supports quite important or only just a little bit important?

And, if it is real important, why is it so important?

Mr. **Gonzales**. I would say it is important because it gives us an opportunity to understand a particular direction that they want that particular policy to go.

Senator **Heinz**. Let me ask you a third and last question. You testify as to the desirability of the evidentiary hearing process at reconsideration and that your people are going to be able to handle it. And, second, that this is going to result in some major improvements. Presumably those major improvements are not going to be cutting all of these people off that the administrative law judges nationwide are reinstating nearly two out of three of.

One of our witnesses today—and I must add, witnesses that we had in Chicago and witnesses that we have had in Washington—have criticized that position saying that those are not truly evidentiary hearings; that there are many procedural safeguards that are missing. Is that true and is that a problem?

Mr. **Gonzales**. I am glad you asked that question because I have been wanting to comment on what I heard earlier; that it would not work. I understand one of the gentlemen that spoke earlier said that he had been exposed to, I think, three evidentiary hearings, and his office; a total of six. You all know that we only did the pilot in three States for about 3 months. What I am asking is for these people to give us time to work with the evidentiary hearing, and I mean a year or longer. We probably will find some things in the process that we can refine.

Senator **Heinz**. Let me ask you: How, to be specific—how can that really work as an evidentiary hearing if the beneficiary and his counsel do not have the simple right of cross-examination? How can you really have an evidentiary hearing without at least cross-examination?

Mr. **Gonzales**. I think that is something that we probably ought to be flexible on. And I think that may be one of the things we may want to change our position on later, perhaps.

Senator **Heinz**. I am glad you said that. I wasn't sure what your definition of flexibility was until you just defined it, which is changing your opinion.

Mr. Chairman, I want to thank you for this hearing. There is one other point I want to make on this cost issue. Every time we hear from Mr. Stockman—and he sends some good, unfortunate soul like Martha McSteen down to do his bidding as the good soldier that she as Acting Commissioner has to be to say things I suspect she in her heart of hearts thinks are just absolutely wrong, we hear the legislation is going to cost too much. One of the reasons the administration thinks your bill or my bill is going to be so expensive is because they say the language in it is going to result in the application of medical improvement retroactively, that the court's are going to require that all these terminations be opened up; and that is what is going to vastly increase the cost of the bill.

We are going to get an adverse court decision that is going to kill us. But at the same time, when Ms. McSteen came down and presented the outlay figures to our committee for what the program was going to cost and I looked at them, I said, my goodness, it seems to me somewhat unrealistic that over the next 5 years your budget base line, 1984 through 1988 is only $98.9 billion. Why, that does not even reflect the current stalemate in the courts with the three circuits and all the State moratoria. That stalemate will insure that you outlay at least $100.4 billion over 5 years.

I said, isn't it interesting that indeed, although you tell us Congressman Pickle's and Senator Cohen's bills are going to cost all this money because you are going to lose the court decision, that your own baseline assumes that when there is a court decision, you are going to win it. And they just cannot have it both ways. That is the grossest inconsistency of argument I have come across in a long time, and in our line of work we find a few of those, Jake. But this is about as bad a one as I have come across.

Mr. Chairman, I have no further questions. I sincerely appreciate this hearing. You have conducted a superb hearing and we have an excellent record as a result.

Congressman Pickle. Senator Heinz, we thank you very much. I want to repeat again that Texas is glad to welcome you here. We are glad that you have inlaws who are Texans; that improves your acceptance at the beginning.

I also appreciate the fact that you would speak affirmatively of Commissioner Martha McSteen. She is a very able person and we are confident that she is going to help us reach a better answer on this, because we have confidence in her.

Let me also say that I want to express my appreciation to Congressman Frost for having arranged this meeting, selecting the place and contacting some of the witnesses. We have had excellent cooperation from Congressman Frost.

If any of you who have been here this morning would like to have a statement included in the record, we would be glad to do that if you will identify yourself to the committee afterward. We will not be able to take a statement unless it is of reasonable length. We would be glad to have it. And if you want to proffer questions to the committee, we will be glad to respond to you.

In behalf of the House Social Security Subcommittee and the Senator's Aging Committee from the Senate, I want to say that we are glad you came. We will continue to have additional hearings throughout the country to focus on this issue so vital to those who cannot help themselves and we will proceed to do the best we can.

This is now the end. If you have no additional statements, we will conclude.

[Whereupon, at 12:10 p.m., the hearing adjourned.]

APPENDIX

MATERIAL RELATED TO HEARING

ITEM 1. BACKGROUND MATERIAL ON HEARING, PREPARED BY THE STAFF OF THE SPECIAL COMMITTEE ON AGING

1. Overview

The social security disability insurance (DI) program is the Nation's primary source of income support for 2.7 million disabled workers and their dependents (1.2 million). Since 1981, the Social Security Administration (SSA) has aggressively implemented a program of continuing disability investigations (CDI's) to reexamine the eligibility of current DI beneficiaries, in order to ensure that only the truly disabled remain on the rolls. The CDI's were mandated by the Social Security Amendments of 1980.

In the period between March 1981 and November 1983, SSA conducted 1.1 million CDI's. Termination notices were sent to 470,000 beneficiaries informing them that they were no longer eligible for DI benefits. In other words, 45 percent of those subject to a CDI were terminated from the rolls. This high termination rate, in conjunction with the fact that two-thirds of those who appealed to an administrative law judge (ALJ) had their benefits reinstated, has led to widespread concern that the CDI's were being administered in an improper and unjust manner.

Specifically, critics have charged that the CDI's have been conducted hastily and haphazardly, and that the reviews simply do not render accurate or valid conclusions about a beneficiary's capacity to work. Though the problems with the disability review process are very complex and multifaceted, controversy has centered on four key issues: (1) The extent to which persons can be terminated whose disabling condition has not improved medically since their admittance to the rolls; (2) the quality of the CDI's; (3) the great discrepancy in standards of evaluation between State disability examiners and ALJ's; and (4) the degree to which the mentally disabled have been discriminated against by the CDI's.

In the past year, we have witnessed an unprecedented revolt of the States and the courts against SSA's implementation of the CDI's. Currently, more than half the States have either suspended the CDI's altogether, or conduct them under guidelines that differ from those of SSA. Many States have declared moratoria on the reviews on their own initiative, in open defiance to SSA; others are conducting the reviews under court imposed standards. Several important court decisions have recently been issued which have found SSA's administration of the CDI's to be in violation of the law. Combined, the actions represent a very serious crisis in the disability program.

For the past 2½ years, Congress and SSA had actively negotiated to construct responsible legislation to comprehensively reform the disability program. Recently, the administration has turned its back on these negotiations, and now opposes any substantial legislation. Two major bills, H.R. 4170 and S. 476, are currently pending before Congress. H.R. 4170 is the Tax Reform Act of 1983, and contains a great number of provisions unrelated to disability. The House Ways and Means Committee has reported out H.R. 4170, and it is anticipated to be voted upon in March.

2. What Is a CDI?

The Social Security Amendments of 1980 required SSA to review the continuing eligibility of all disability beneficiaries once every 3 years, except those designated permanently disabled, which are reviewed every 6 to 7 years. State agency disability determination services (DDS) conduct the CDI's under standards defined by SSA.

The CDI process begins with the State DDS notifying the beneficiary that he or she is up for review, and requesting that the beneficiary submit recent medical information. If the current medical evidence is not detailed enough, or if the beneficiary has had no recent medical treatment, the State disability examiner may arrange for a consultative examination (CE).

The disability examiner evaluates the medical evidence and determines whether the beneficiary is eligible under current review standards. Those found ineligible are informed they are allowed to submit further evidence. If the State agency, after evaluating the new evidence, still finds the beneficiary ineligible, the beneficiary is notified of this fact, and informed that he or she may appeal by requesting a reconsideration within 60 days.

The reconsideration process is very similar to the initial review, except that a different team of State agency examiners reviews the case. It should be noted that the beneficiary never encounters in person the DDS examiners at the initial review level. Until recently, this was also the case with the reconsideration stage. This lack of face-to-face contact was the subject of a great deal of criticism, and at the end of 1982, Congress mandated that SSA offer face-to-face evidentiary hearings at the reconsideration level, beginning in January 1984. In the past, initial review decisions were reversed at a rate of only 10 to 15 percent. It is expected that the face-to-face interviews will significantly increase that reversal rate, perhaps to 25 to 30 percent.

In reviewing continuing eligibility at both the initial review and reconsideration levels, SSA employs a five-step sequential evaluation process. The successive steps are:

Step 1.—SSA must determine whether the claimant is engaging in substantial gainful activity; if he or she is, the claimant is disqualified.

Step 2.—SSA must evaluate whether the impairment is severe; if it is not, eligibility is denied.

Step 3.—If the impairment is severe, SSA must determine whether the claimant's condition "meets or equals" the listing of impairments defined in regulations. The listing is essentially a set of conditions, signs, or symptoms which are deemed to be so severe that their presence alone justifies a finding of disability.

Step 4.—This step really involves two substeps: (a) A determination of the applicant's residual functional capacity (RFC); and (b) an evaluation of whether the claimant has sufficient RFC to return to the mental and physical demands of his or her past work. The RFC assessment requires a practical examination of what an individual can do despite the limitations of his or her disability.

Step 5.—If an individual is determined incapable of functioning in his or her previous job, SSA must evaluate whether that person can perform any work in the national economy, in reference to the applicant's age, education, and prior work experience.

If both the initial review and reconsideration DDS teams completely review the beneficiary under the five-step sequential evaluation and find the beneficiary ineligible, he or she may request a hearing before an administrative law judge (ALJ). The ALJ is responsible for obtaining all relevant evidence for the case, holding a face-to-face nonadversary hearing with the beneficiary, and reaching a conclusion in the case. The ALJ may request testimony from medical and vocational experts and can require the beneficiary to undergo a consultative exam. The individual may be represented by legal counsel, submit additional evidence, and produce witnesses.

In the past 2½ years, ALJ's have reversed State DDS decision at a rate of 60 to 65 percent. Initially, approximately 70 percent of those terminated at the State agency level appealed, and recently, that figure has increased to about 90 percent. That increase is the result of legislation enacted at the end of 1982 that temporarily extended benefits through the ALJ stage to terminated beneficiaries appealing unfavorable State agency decisions. That provision expired in December 1983, and unless Congress acts by April 1984, "aid-paid-pending" appeal will cease.

If an ALJ does not reverse the State agency termination decision, the affected individual may request that SSA's appeals council review the case. The appeals council may uphold, reverse, or remand the ALJ decision. If the council affirms the denial of benefits or refuses to review the case, further appeal may be made through the Federal district and appellate court system. In the past 2 years, the Federal courts have been besieged with disability cases. Presently, there are about 40,000 cases pending in the Federal circuit court system.

3. Problems With the CDI's

The periodic review provision of the 1980 amendments were intended to begin on January 1, 1982, with their implementation producing a net savings of only $10 million in the 4-year period between 1982 and 1985. On its own initiative, SSA accelerated the implementation of the reviews to March 1981. The accelerated reviews were included as part of the Reagan Administration's fiscal year 1982 budget initiatives, and involved reviewing 30,000 additional DI cases per month beyond the regular review workload. In fiscal year 1980, SSA reviewed the continuing eligibility of 160,000 beneficiaries; in fiscal year 1981, close to 260,000 CDI's were conducted. Once initiated, the volume of the CDI's increased dramatically. Overall, between March 1981 and November 1983, over 1.1 million reviews were completed, and 470,000 beneficiaries were determined no longer eligible for DI benefits.

Not long after the CDI's were implemented in March 1981, widespread concern arose about the quality, accuracy, and fairness of the reviews. Press accounts of severely disabled individuals who had been terminated from the rolls began to proliferate; and constituent reports to Members of Congress established an alarming pattern of questionable terminations. It became clear that close to half of all DI beneficiaries subjected to a CDI were terminated at the initial decision level, often without much warning, and in many instances without evidence that the individual was not disabled. Significantly, 65 percent of those terminated had their benefits reinstated, if they appealed to an ALJ.

Controversy surrounding the CDI's has focused on a few key issues, which are discussed below.

A. MEDICAL IMPROVEMENT

One of the first problems cited with the CDI's was the fact that beneficiaries were being terminated from the rolls despite the fact that their disability condition had not improved, or had worsened. In essence, beneficiaries admitted to the rolls under one set of standards were being reevaluated upon a new, more stringent set of standards, and many were being terminated. People who had been placed on the DI rolls 5, 10, and 15 years before the CDI's' many of whom had been led to believe they had been granted a lifetime disability pension, were removed from the rolls with little advance warning or explanation.

The central issue in the debate surrounding the concept of medical improvement is the question of who must bear the burden of proof in the determination of continuing eligibility for DI benefits. Currently, it is the obligation of the beneficiary to prove during the course of a CDI that his or her disability meets contemporary eligibility criteria. How long that person has been on the rolls, or whether or not that person is physically or mentally more fit for employment than when first granted disability status, is immaterial. SSA is obligated only to evaluate cases in relation to present day medical and vocational standards. With a medical improvement standard, the burden of proof shifts from the beneficiary to SSA, and it becomes the obligation of the agency to demonstrate that the individual's disabling condition has improved.

Both comprehensive bills currently pending before Congress, H.R. 4170 and S. 476, include a stipulation that in reviewing continuing eligibility, SSA must employ a medical improvement standard. In both these bills, SSA is required to demonstrate a beneficiary's condition has improved, or that one of four exceptions apply. The exceptions are: (1) That the individual is actually working, and hence should no longer be eligible; (2) the original admittance decision was clearly erroneous or fraudulent; (3) the individual has benefited from advances in medical or vocational technology that allow them to work; and (4) new evaluational techniques show that the disabling impairment is not as severe as originally thought.

B. MENTAL IMPAIRMENTS

One of the most heavily criticized aspects of the CDI's is that the reviews systematically discriminate against mentally disabled beneficiaries. Overwhelming evidence was presented at a Senate Special Committee on Aging hearing in April 1983 that the mentally impaired were among the most likely to be reviewed, and the most likely to be terminated, of the beneficiary population. Two major court decisions, one in Minnesota and one in New York, have found SSA guilty of instituting a covert and illegal policy that singled out the mentally ill for unfair treatment, and that the criteria employed to their capacity to work are deeply flawed. (See section 6, judicial rulings).

The mentally disabled are particularly vulnerable to CDI terminations. Since the evaluation of mental impairments is often subjective, and based on symptomological evidence, it has been easy for SSA to terminate people with mental disabilities. The relevant medical listings are antiquated, and SSA instituted an extraordinarily rigid policy in evaluating the RFC of mentally impaired individuals.

The Government Accounting Office (GAO) has documented that although only 11 percent of those on the rolls are there because of mental impairments, 27 percent of those terminated by the CDI's are of the mentally disabled category. Further, ALJ reversal rates for mental disability appeals cases are much higher (91 percent) proportionally than for the rest of the disabled population. GAO also found that State DDS' rarely have qualified psychologists.

Last summer, Senator Heinz introduced S. 1144, a bill to impose a temporary moratorium upon the reviews of the mentally disabled, pending revision of the regulatory criteria relating to the review of mental impairments. This revision would be completed by SSA in a period of 6 months, in consideration with a panel of experts in the field of mental health. The bill also includes a provision requiring that only a qualified psychologist or psychiatrist make the medical determination in mental impairment cases.

On June 15, 1983, Senator Heinz offered an amendment to a supplemental appropriations bill (H.R. 3069) that contained the basic provisions in S. 1144. The amendment passed the Senate by a wide margin, but was dropped in the House-Senate conference due to a procedural conflict with House rules that preclude the addition of substantive authorizing legislation to appropriations bills.

Subsequently, the major provisions of S. 1144 were incorporated into H.R. 4170, the House bill to comprehensively reform the disability review process.

C. QUALITY OF THE CDI'S

Not long after the CDI's were first implemented, it became clear that there were serious inadequacies in the review process. Without sufficient time, staffing, or resources, State agencies were forced to process far too many CDI's, far too quickly. Further, the manner in which the cases were developed, including the collection of medical evidence, came into serious question.

The simple increase in volume from a routine 160,000 reviews per year to roughly 500,000 CDI's in fiscal year 1983, in and of itself accounts for a major dimension of this problem. The phasein period was much more rapid than intended by Congress, and State agencies sacrificed thoroughness and accuracy to speed and efficiency.

Major problem areas have included: (1) Failure to collect and develop appropriate medical evidence, particularly from treating physicians; (2) over-reliance on cursory consultative examinations, which often fail to account for the longitudinal dimension of a beneficiary's disability; (3) the overly paper-oriented nature of the reviews, and the lack of face-to-face interaction between beneficiaries and DDS examiners; and (4) inadequate notification to beneficiaries of what a CDI entails, what is expected of them, and what range of potential outcomes might occur during the CDI process.

D. UNIFORM STANDARDS

One of the critical problems in the disability review process is that different levels of review are bound to different evaluational criteria. The fact that ALJ's reverse almost two-thirds of all appeals of State agency termination decisions is the most striking indication of this structural flaw.

Currently, SSA issues many substantive policy changes through subregulatory means, such as the POMS (operating procedures), internal memoranda, and Social Security rulings. These changes are not open to public comment and review. To the extent that there are ambiguities or substantive conflicts between these subregulatory standards and published federal regulations, State disability examiners are bound to SSA's administrative directives, while ALJ's adjudicate on the basis of formal regulations.

The root of this inconsistency lies in the statutory exclusion of SSA from the rulemaking requirements defined in the Administrative Procedures Act (APA) of 1946. The APA requires that if an agency intends to propose rulemaking changes, it must publish those proposals in the Federal Register and allow public comment and review. Agencies are allowed to use internal, subregulatory channels to disseminate instructions that serve to clarify or provide interpretive assistance in the concrete administration of the rules. Through HHS has voluntarily agreed to follow APA guidelines, SSA nonetheless continues to promulgate substantive policy changes through subregulatory methods without ever allowing public inspection. The upshot of this practice is that there is no uniformity throughout the disability review and appeals process.

Both comprehensive bills include provisions mandating that SSA follow the public notice and comment requirements of the APA. Advocates claim this would ensure uniform standards at all levels of adjudication, and would allow greater public participation in the rulemaking process.

E. BENEFITS THROUGH THE ALJ STAGE

A key issue that has been involved with the controversy surrounding the continuing eligibility review process is the extension of benefits through the ALJ stage to beneficiaries choosing to appeal State agency termination decisions.

Public Law 97-455 included a provision extending benefits through the ALJ stage, subject to recoupment in the event that the ALJ sustains the termination decision. This provision, however, was adopted on a temporary basis only, pending further congressional action to comprehensively reform the disability review process. "Aid paid pending" was due to expire in October 1983; however, Congress enacted a 67-day extension as part of H.R. 4101. That extension expired in December, and unless Congress acts before April 1984, extended benefits will cease.

4. Administrative Initiatives

In response to congressional pressure and public outcry, the Social Security Administration has implemented a number of its own initiatives to address the problems associated with the disability determination process in general and the CDI's in particular. These initiatives were instituted in two waves; one in late 1982, another in June 1983.

In 1982, SSA began conducting face-to-face informational interviews at SSA district offices to obtain directly from beneficiaries pertinent medical records. The definition of "permanently disabled" was expanded to include additional impairments, and thereby exclude from the CDI's certain groups of beneficiaries. SSA began requiring state disability determination services to collect all relevant medical evidence for the previous 12 months in order to improve the medical evaluation and case development procedures. State agencies are also now required to be more thorough and specific in delineating why beneficiaries are no longer eligible for disability benefits. SSA also initiated a project to reexamine the evaluational process employed in reviewing mental disorders, including testing the utility of multiple consultative examinations in psychiatric cases. Finally, SSA reduced the volume of CDI's in a limited number of States.

In response to many of the problems brought to light by the Senate Aging Committee's hearing on Social Security Review of the Mentally Disabled held in April, Secretary Heckler announced a series of administrative initiatives on June 7, 1983. These initiatives included a moratoria on reviews of two-thirds (135,000) of all mental impairment cases pending consultation with mental health specialists on methods to revise and improve the review process for those with mental disorders. Additionally, another 200,000 beneficiaries were designated "permanently disabled," which raised the total exempt from the CDI's to 37 percent of all those on the rolls. SSA also instituted a policy of random selection of CDI cases (rather than focusing on targeted groups most likely to generate terminations), and thereby lowering the termination rate.

5. State Actions

A great number of States have revolted against SSA's recent practices and policies relating to the CDI's, and a number of Governors and state agency administrators have imposed moratoria on the reviews. On March 8, Massachusetts Governor Dukakis issued an executive order requiring the State disability determination office to implement a medical improvement standard in reviewing cases, as ordered by a district judge in *Miranda* v. *Secretary of HHS*. Arkansas, Kansas, and West Virginia have similarly implemented review procedures at odds with official SSA policy. In Kansas, Governor Carlin also ordered the reopening and reexamination of all cases terminated since March 1981.

On July 22, 1983, Cesar Perales, Commissioner of the New York State Department of Social Services, suspended reviews pending the establishment of a medical improvement standard. Alabama, New Jersey, Pennsylvania, Michigan, Maine, Illinois, Virginia, North Carolina, Ohio, and New Mexico all have self imposed moratoria on the reviews. Alaska Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington have not or at one time initiated temporary or indefinate moratoria. Combined, more than half the States, at the end of 1983, were either not processing the reviews, or were conducting them under standards that varied with official SSA procedures and requirements.

6. Judicial Rulings

As CDI terminations mounted, thousands of individuals appealed their cases to the Federal courts. The subsequent court decisions have very frequently ruled that

SSA's policies and procedures violate the law. A number of Federal courts have ruled SSA must employ a medical improvement standard when conducting CDI's. Two courts have determined that SSA's reviews of the mentally ill have been administered in an arbitrary and illegal fashion. These legal actions have contributed to the disintegration of national uniformity in the disability program.

A. MEDICAL IMPROVEMENT

Currently, SSA does not use medical improvement as a standard for evaluating the continuing eligibility of disability beneficiaries. However, a number of Federal courts have ruled that this policy is in violation of the law, and that SSA must demonstrate that an individual has improved medically while on the rolls, or that the original decision was clearly erroneous before terminating benefits. This has been the position of the courts in SSI, SSI "grandfathered," and DI cases. Other courts have ruled that once a person has been found disabled, there is a presumption that the individual remains disabled and that SSA bears the burden of proof in determining that the beneficiary is no longer disabled.

The Ninth Circuit Court of Appeals has ruled in two cases—*Finnegan* v. *Mathews* and *Patti* v. *Schweiker* that SSA must incorporate a medical improvement standard into its administration of the CDI's. Courts in virtually every other circuit have since rendered medical improvement decisions unfavorable to SSA.

B. NONACQUIESCENCE

Under the Federal judicial system, decisions of a circuit court of appeals are considered the "law of the circuit" and constitute binding case law on all district courts within the circuit. SSA's policy with regard to rulings with which it disagrees has been to only apply the unfavorable decision to the specific case upon which it was rendered, and not to the entire circuit, or to the rest of the Nation. Hence, the interpretation of the law by the court is not considered binding for either State agency disability determination services or for Federal SSA offices. SSA also instructs its ALJ's to persist in applying existing agency policy and ignore the court's rulings.

This policy, in combination with SSA's refusal to appeal any unfavorable circuit court decisions to the Supreme Court (which would determine a national standard) has been heavily criticized as arrogant and lawless behavior on the part of a Federal agency. Federal judges in both the Eighth and Ninth Circuits have challenged this policy of nonacquiescence. In *Lopez* v. *Heckler*, a class action suit in the Ninth Circuit, the judge refused to grant a stay, as requested by SSA, of the court's earlier medical improvement decisions. Currently, in the entire Ninth Circuit SSA is required to follow a medical improvement standard. However, in an unusual manner, Supreme Court Justice Rehnquist did grant SSA a partial stay by allowing SSA to avoid making interim payments to those who had been terminated from the rolls in the past who must be reevaluated under a medical improvement standard. The plaintiffs in the case then asked the Supreme Court to overturn the Rehnquist stay, but on October 11, 1983, the Court declined to hear the request, thereby allowing the Rehnquist stay to remain in force.

Presently, SSA is not processing CDI's in the Third and Fourth Circuits due to unfavorable medical improvement cases pending resolution upon appeal. Tens of thousands of cases await Federal judicial consideration, and it is clear that courts will continue to rule that SSA must implement a medical improvement standard until the Supreme Court considers this issue (1985 at the earliest).

C. MENTAL IMPAIRMENT DECISIONS

In two important class action suits, *Mental Health Association of Minnesota* v. *Schweiker* and *City of New York* v. *Heckler*, SSA has been found guilty of implementing a covert and illegal policy that systematically discriminated against the mentally ill. Both courts ruled SSA must reopen the cases of all mentally impaired individuals initially denied or terminated from the disability rolls, and reexamine their eligibility under lawful guidelines.

The essence of the illegal and "covert policy" consisted of SSA internal memoranda, returns and reviews to State disability determination offices requiring that if an individual does not meet or equal the listing of impairments, that person can be presumed to be capable of performing unskilled work. That policy resulted in a virtual automatic denial of benefits to mentally impaired claimants under age 50.

In New York, District Judge Jack B. Weinstein argued that the result of "SSA's surreptitious undermining of the law" was "particularly tragic in the instant case because of its devastating effects on thousands of mentally ill persons whose very disability prevented them from effectively confronting the system." He also noted that by denying disability benefits to the mentally impaired, SSA simply transferred the costs of their care to the "social service agencies, hospitals and shelters" of New York City and New York State.

Both courts found that SSA was not conducting the fourth step of the sequential evaluation—the evaluation of residual functional capacity—in accordance with the law. The assessment of RFC, if it was done at all, was reduced to a "paper charade" in which any individual who did not meet or equel the listings was assumed, ipso facto, to be capable of unskilled work. Judge Weinstein summarized the implications of this policy in the following passage:

"The Social Security Act and its regulations require the Secretary to make a realistic, individual assessment of each claimant's ability to engage in substantial gainful activity. The class plaintiffs did not receive that assessment. On the contrary, SSA relied on bureaucratic instructions rather than individual assessments and overruled the medical opinions of its own consulting physicians that many of those whose claims they were instructed to deny could not, in fact, work. Physicians were pressured to reach "conclusions" contrary to their own professional beliefs in cases where they felt, at the very least, that additional evidence needed to be gathered in the form of a realistic work assessment. The resulting supremacy of bureaucracy over professional medical judgments and the flaunting of published, objective standards is contrary to the spirit and letter of the Social Security Act."

KEY STATISTICS

Continuing Disability Investigations (March 1981 to November 1983): 1.1 million reviewed; 470,000 termination notices sent; 160,000 reinstated upon appeal; 120,000 appeal cases pending; 190,000 no longer on the rolls; termination rate at initial decision level: 40–45; net termination rate after appeals process: 20–25; Administrative Law Judge reversal rate: 60–65.

Program statistics	Disability insurance	SSI disability
Total cost, 1983 (billion)	$17.9	$5
Number of beneficiaries (million)	3.9	2.2
Average monthly benefit:		
Individuals	$435	$235
Families	$841	

State actions and judicial rulings: 16 states have declared moratoria on the reviews; 12 states conduct the CDI's under court imposed standards; SSA has suspended CDI's in the Third and Fourth Circuits (6 states) due to unfavorable judicial rulings. SSA's Chicago Region and New York are under court order to reopen all mental impairment cases and reinstate terminated beneficiaries, pending re-examination of their cases under lawful guidelines.

LEVELS OF DISABILITY DECISIONMAKING

Level	Administered by	Time allowed to appeal to next level (days)	Average time from request to decision (days)
Initial review	State agency (DDS)[1]	60	65
Reconsideration	State agency (DDS)[1]	60	50
Hearing	SSA's administrative law judges	60	184
Appeal	SSA's Appeals Council	60	80
Federal court review	Federal court system		NA

[1] Disability determination service.

ITEM 2. STATEMENT OF MARTHA A. McSTEEN, ACTING COMMISSIONER, SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES.

Mr. Chairman and Members of the Committee, I am pleased to submit this statement on the progress we have made in improving the Social Security Disability decisionmaking process. I would like to make clear at the outset that the administration opposes enactment of disability legislation. We believe that the administrative and legislative reforms already accomplished make further legislative changes unnecessary. Therefore, the very high costs of the disability provisions in H.R. 4170—about $6 billion in the first 5 years—are unacceptable, especially at the present time when the safety margins of the OASDI trust funds are relatively small.

IMPROVING THE DISABILITY PROCESS

As you are well aware, the implementation of periodic review of disability beneficiaries mandated by the Congress in 1980 brought to light the need for a number of fundamental changes in the disability decisionmaking process. It became clear that the review process was creating hardships for some beneficiaries and that these hardships had to be alleviated—either administratively or legislatively. Beginning early in 1982, we began implementing a series of administrative reforms to make the disability decisionmaking process more responsive to the needs and concerns of the disabled. In addition, the Congress enacted some important reforms in the disability process. While the early reforms went far toward making the CDR process more fair, humane and effective, additional experience, along with consultation with those concerned with the disability program, pointed the way to the further major reforms that Secretary Heckler announced on June 7, 1983.

I want to mention that a number of these reforms improved the initial disability decisionmaking process as well. Because of the public attention given to the continuing disability reviews (CDR) over the last few years, the progress we have made with the initial disability claims process has perhaps been overshadowed.

Two of the key legislated reforms (included in Public Law 97-455) were the continued payment of benefits during appeal (extended by Public Law 98-118) and a face-to-face evidentiary hearing at the reconsideration level. The provision to continue payment of benefits during appeal to an ALJ hearing relieved the anxieties and financial hardships of many whose disability benefits have been terminated. About 93 percent of those who appeal the decision to terminate benefits have elected continuation of benefits.

A basic issue to be resolved is whether to extend or modify the continued payment provision because it has expired. Under Public Law 97-455 as extended, continued payments can be offered only to beneficiaries who were determined no longer disabled before December 7, 1983. As we have in the past, we still support continued payment of benefits through the first evidentiary hearing inthe appeals process.

Incidentally, based on the results of our pilot project on providing an evidentiary hearing at reconsideration, we believe this program will improve beneficiary satisfaction with the disability process. Since States expressed an interest in conducting the reconsideration hearings, we have given them the opportunity to do so. We believe that giving the States the option to participate will strengthen the positive relationship between the States and the Federal Government in the administration of the program. Preliminary responses from the States indicate that nearly all States are interested in conducting the reconsideration hearings.

I might mention that the reconsideration hearing process is being implemented using State hearing officers in States that are ready to conduct the hearings. In other States, Federal hearing officers will temporarily conduct the hearings until the States are ready to do so. (Federal hearing officers will conduct the hearings in the few States that have declined.)

Let me now briefly note the most important of our administrative reforms to date. These reforms were designed to make the program more responsive to the needs of beneficiaries while still assuring that we fulfill our obligatons to Congress and the taxpaying public to administer the program in an efficient and effective manner.

We reduced the number of beneficiaries to be reviewed every 3 years by expanding our definition of permanent disability. Now roughly 40 percent of disabled worker beneficiaries are exempted from the 3-year review.

We suspended the review of mentally impaired beneficiaries with functional psychotic disorders until the criteria for reviewing these cases could be revised. These beneficiaries were the most prone to incorrect terminations. Part of the problem in the review of these cases is that diagnosis, treatment and standards of measurement of these disorders are very difficult.

We begin each CDR with an interview in a local Social Security office in order to explain the process to beneficiaries and advise them of their rights and responsibilities.

We initiated a top-to-bottom review of disability policies and procedures in consultation with appropriate experts and the States, and have increased our efforts to seek the advice of the medical community on the entire disability process. There are several groups currently reviewing both physical and mental impairment issues, and they have recommended a number of significant actions.

I am particularly pleased with the work done by the group revising the criteria for mental impairments in the listings. The groups, which includes outside experts as well as SSA and State agency personnel, is close to completing its work on evaluating mental impairments and will be submitting its recommendations to us very soon. We hope to have a revised mental impairment listing published for public comment by April.

Also, we asked a workgroup to consider how we might make greater use of work evaluations in mental impairment cases to assess a person's ability to work. We believe that these evaluations could be very helpful in providing a better picture of what an individual is able to do. A report detailing this work group's recommendations will be published shortly in the Federal Register and comments invited.

Another workgroup is exploring ways of improving the quality, content and timeliness of psychiatric medical evidence.

We have entered into a peer review contract with the American Psychiatric Association. This should be in place by the time the revised mental impairment criteria are in effect.

CONSIDERATION OF ADDITIONAL LEGISLATIVE REFORMS

Before moving to a discussion of specific legislative proposals, I want to comment briefly on the cost of the disability provisions in the bill (H.R. 4170) approved by the Committee on Ways and Means on October 21, 1983. The bill would cost about $6 billion over the five fiscal years 1984 through 1988. This includes OASDI program and administrative costs plus SSI, Medicare and Medicaid costs. I should emphasize that the estimate represents costs only through FY 1988. These costs assume that under the language of the bill the courts would be likely to require the medical improvement to be applied retroactively, requiring reopening of cases decided over the past 3 years. (Applying the medical improvement standard only prospectively would result in costs of about $3 billion over the first 5 years for the disability provisions in H.R. 4170.)

This additional outgo from the DI fund—with or without reopening of past CDR cases under a medical improvement standard—probably would require earlier repayment of the interfund loans that were made to the Old-Age and Survivors Insurance Trust Fund from the DI fund in late 1982. Under the Social Security Amendments of 1983, these loans do not have to be repaid until 1989, and our estimates for present law indicate that the DI fund would probably not need earlier repayment. These loans might have to be repaid as early as 1985 to assure continued payment of DI benefits if H.R. 4170 is enacted. Even with repayment of the loans from the OASI trust fund in 1985, the DI trust fund ratio is estimated to decline to 11 percent—less than 2 months' outgo—by January 1, 1989.

Also, the increased expenditures under the Ways and Means Committee's bill would reduce trust fund assets, increasing the likelihood that the automatic stabilizer provision in the law would be triggered. This would mean that the Social Security cost-of-living increases for December 1984 and possibly other years could be reduced—but only if wages increase at a lower rate than prices.

Now I want to comment on some of the major items of disability legislation that were considered in the first session of this Congress.

CONTINUATION OF BENEFIT PAYMENTS

The first issue I want to mention is the continuation of benefit payments during appeal. As I indicated earlier, the provision in the law expired on December 6. We directed the States to hold termination notices beginning December 7, because we needed time to revise the notices due to the expiration of continued payment and also needed to advise beneficiaries of their rights to a reconsideration hearing effective January 1.

We have notified the States to resume processing cessation cases, beginning this month. Of course, those States that are affected by court orders will process cases in accordance with the court orders. In the case of cessations effective for February, benefits will be payable for February and for 2 additional months—the last check will be paid May 3 unless action is taken to reinstate continued payment.

MEDICAL IMPROVEMENT

The administration strongly opposes section 901 of H.R. 4170 which would establish a separate standard of disability for those already on the rolls. About three-quarters of the cost of the House bill is attributable to this provision alone.

There are no statements in the statute as to what standard to use in determining a disability beneficiary's continuing eligibility for benefits. We now use the same standard that we use in initial disability cases.

Both H.R. 4170 and the disability amendments introduced by Senators Cohen and Levin late in the first session of this Congress would provide a medical improvement standard for terminating disability benefits. As part of the disability reforms, we undertook a top-to-bottom review of disability policies and procedures, including the issue of whether an acceptable medical improvement standard could be developed. After months of study of the issue and consideration of the standards in both the Senate and House bills, we have concluded that we must strongly oppose a medical improvement standard.

A basic problem with a medical improvement standard is that it would create different standards of eligibility for initial claims and for continuing disability reviews. This would be unfair and inequitable to people now applying for benefits who could not receive benefits even though they are in the same condition as some people now on the rolls.

Also, those very ineligibles that the 1980 amendments sought to remove from the rolls would continue to get benefits if a medical improvement standard were adopted.

In addition to these various concerns, we believe that reforms in the disability program now underway make such a standard unnecessary. The most important of these reforms are the face-to-face evidentiary hearing at reconsideration and our top-to-bottom review of the disability program.

Most importantly, we believe that most of the pressure for enactment of a medical improvement standard has come because of the initiation of CDR's as mandated by the Congress in the 1980 disability amendments. Beneficiaries had not expected to have their eligibility reviewed. Now, when a person is awarded disability benefits he is told that his continued eligibility will be reviewed and that SSA will periodically redetermine whether he remains so disabled as to be unable to work.

For all of these reasons we believe that a medical improvement standard is not in the best interest of the disability program, and we strongly oppose enactment of such a provision even if applied prospectively only.

FACE-TO-FACE INTERVIEW AT INITIAL LEVEL

Another proposal that has been suggested by some disability interest groups and is contained in H.R. 4170 is to eliminate the reconsideration step in the appeals process for disability cessation cases and, instead, provide a face-to-face interview at the initial level for disability cessation cases. The face-to-face interview would take place after a preliminary unfavorable decision was made but before a final decision was issued. The disability amendments introduced by Senators Cohen and Levin would not eliminate the reconsideration step but would instead require demonstration projects is 5 States on a face-to-face interview at the initial level.

We agree with the need for early face-to-face contact between the disability beneficiary and a decisionmaker to assure correct continuing disability decisions. That is why we supported the face-to-face evidentiary hearing at reconsideration that was provided by Public Law 97–455. However, we oppose such pre-termination hearings because they would abandon the idea of a reconsideration hearing before it is fully tested. The new reconsideration process mandated by Public Law 97–455 should be given a fair trial, particularly in view of the highly successful pilot project results. We have strongly urged the Congress to give this approach a fair chance before considering making a wholesale change.

MORATORIUM ON MENTAL IMPAIRMENT REVIEWS

Under another proposal—which is contained in H.R. 4170 and the disability amendments introduced by Senators Cohen and Levin—there would be a temporary delay of periodic review for all mentally impaired individuals until the criteria for evaluating mental impairments in the Listing of Impairments have been revised. We believe this provision is unnecessary since under the Secretary's disability initiatives SSA has stopped reviews of about two-thirds of mental impairment cases—those most prone to decisional error—until revised standards are developed. Also, because we expanded the definition of permanent disability, the number of mental impairment cases selected for review has been further reduced.

More importantly, the workgroup, which has been reviewing the criteria for evaluating mental impairments since July 1983, will be submitting its recommendations, and we expect to be able to implement their recommendations in the near future. In view of this progress, a moratorium in mental impairment cases is unnecessary.

APA RULEMAKING

Another issue that has been the subject of proposed legislation is making the public notice and comment requirements of the Administrative Procedure Act applicable to SSA rulemaking. We oppose this proposal because it could raise serious questions as to whether an SSA policy is subject to the APA notice and comment requirements. The APA provides that only substantive—not interpretive—rulemaking is subject to the public notice and comment requirements. State agencies or ALJs might question whether they should follow an SSA policy that has not been published under the APA on the grounds that it establishes substantive rather than interpretive policy. Such a situation would add confusion to the disability process and would greatly impede our efforts to assure that uniform standards are used to make disability determinations. Another serious problem is that the provision could be interpreted broadly by the courts with the result that interpretive rulings which contain detail wholly inappropriate for regulations would have to be issued as regulations.

COMPLIANCE WITH COURT ORDERS

This proposal in H.R. 4170 would require us either to recommend appeal of circuit court decisions with which we disagree or to acquiesce in the decision and apply it within the jurisdiction of the circuit court.

We strongly oppose this provision. HHS has always complied with the terms of court orders as they relate to individuals or classes of individuals named in a particular suit. However, our policy of nonacquiescence is essential to ensure that the agency follows its statutory mandate to administer the Social Security program nationwide in a uniform and consistent manner. In a program of national scope, it would not be equitable to people to subject their claims to differing standards depending on where they reside.

There are several reasons why we do not recommend appeal of all circuit court decisions with which we disagree. For example, if the same issue has been decided by a number of courts and the weight of the decisions agrees with our interpretation, we may decide not to recommend appeal of the minority of cases which disagree with our interpretation. To appeal all such cases would be administratively expensive, would be an inefficient use of limited Federal legal resources, and would aggravate the already heavy burden of litigation in Federal courts. If, on the other hand, the weight of the court decisions on a given issue does not agree with our interpretation, we generally recommend appeal of one of more of the cases and may also pursue other remedies such as recommending remedial legislation.

There would be enormous practical problems with circuit-by-circuit acquiescence since we would need to keep track of applicants as they move through the decisionmaking process, determine which circuit law should apply, and separately handle claims by jurisdiction. Special problems could arise where there are conflicting decisions within a single circuit, or a claimant or beneficiary changes residence while a decision on appeal is pending.

The proposal would take away our option to continue to litigate issues already addressed by the circuit courts, thus undermining our ability to defend the many suits brought against the agency each year. Further, requiring us to appeal adverse court decisions to the Supreme Court or else follow them also ignores the severe limitations we face in seeking Supreme Court review. The Supreme Court seldom grants review in cases involving a statutory issue of first impression decided adversely to the Government.

CONCLUSION

In conclusion, I would like to reemphasize that the administration strongly opposes enactment of disability legislation. As I have discussed in my statement, we believe that the administrative and legislative reforms already accomplished, and in progress including the face-to-face evidentiary hearing at the reconsideration level; the expansion of the definition of permanent disability; the suspension of review of certain mentally impaired beneficiaries; the improved initial CDR interviews; and our on-going review of disability policies and procedures make further legislative changes unnecessary. Therefore, the very high costs of the disability provisions in H.R. 4170—about $6 billion in the first 5 years-are unacceptable, especially at the present time when the safety margins of the OASDI trust funds are relatively small.

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